

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO  
3 UNITED STATES OF AMERICA,  
4 Plaintiff,  
5 vs. NO: CR-15-4268 JB  
6 ANGEL DELEON, et al.,  
7 Defendants.

8  
9 Transcript of excerpt of testimony of  
10 JOSEPH SAINATO  
11 March 1, 2018, and March 2, 2018  
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1 March 1, 2018

2

3 THE COURT: All right. Ms. Jacks, how do  
4 you wish to proceed? Do you want to call your first  
5 witness?

6 MS. JACKS: I guess so. Just a minute.  
7 May I confer with Mr. Jewkes?

8 THE COURT: You may.

9 MS. JACKS: Your Honor, we'll start with  
10 FBI Agent Sainato.

11 THE COURT: Mr. Sainato, if you'll come up  
12 and stand next to the witness box on my right, your  
13 left, before you're seated, my courtroom deputy, Ms.  
14 Standridge, will swear you in.

15 JOSEPH SAINATO,  
16 after having been first duly sworn under oath,  
17 was questioned and testified as follows:

18 THE CLERK: State and spell your name for  
19 the record.

20 THE WITNESS: Yes, ma'am. My name is  
21 Joseph Sainato. It's J-O-S-E-P-H, Sainato,  
22 S-A-I-N-A-T-O.

23 THE COURT: Mr. Sainato. Ms. Jacks.

24 BY MS. JACKS:

25 Q. Good afternoon, Agent Sainato.

1 A. Good afternoon.

2 Q. On January 22nd of 2018, did you  
3 participate in an interview with a government  
4 witness by the name of Lupe Urquizo?

5 A. Yes, ma'am.

6 Q. And who else was present at that  
7 interview?

8 A. Matthew Beck from the U.S. Attorney's  
9 Office.

10 Q. And what about FBI Agent Nancy Stemo? Was  
11 she also there?

12 A. She was not.

13 Q. She was not?

14 A. No, I don't believe so.

15 Q. Did you prepare a 302 in connection -- or  
16 was a 302 -- excuse me. Was a 302 prepared in  
17 connection with that interview?

18 A. Yes, ma'am.

19 Q. And do you have a copy of it with you  
20 there today?

21 A. No, ma'am, I do not.

22 MS. JACKS: Your Honor, I have a page  
23 that's Bates stamped 51485, that's dated January 22,  
24 2018. May I approach the witness?

25 THE COURT: You may.

1 MS. JACKS: Is Mr. Beck handling this  
2 matter? Because I think he's a witness, and I would  
3 actually ask that he be excluded.

4 THE COURT: How does the Government and  
5 Mr. Beck feel about that?

6 MR. BECK: I don't think so. I mean, I  
7 don't think I need to be excluded. We've had -- in  
8 this trial, we've had a defense investigator testify  
9 with the defense attorney, with whom he was present  
10 with one other person. So I don't think that I need  
11 to be excluded, but --

12 THE COURT: Well, I think I have to rely  
13 heavily upon the Government's representations as to  
14 what occurred here, and Mr. Beck's representations  
15 are going to be necessary, so I'm not going to  
16 exclude him. The Government can decide how they  
17 want to handle this hearing, but I think I'm going  
18 to have to rely heavily upon the representations of  
19 the Government whether they're in sworn form or  
20 otherwise.

21 So I'll deny the request to exclude him.

22 MS. JACKS: Well, Your Honor, who is going  
23 to be conducting this examination from the  
24 Government?

25 MS. ARMIJO: Mr. Castellano and I will be

1 doing it. We're trying to decide that right now.  
2 But it will be one of us. She can show us the  
3 document.

4 MS. JACKS: Your Honor, given that the  
5 Court is disinclined to excuse Mr. Beck, we'd like  
6 to call him first, and then we'll take the other  
7 witnesses.

8 THE COURT: Any objection to that, Mr.  
9 Beck?

10 MR. BECK: Yes, Your Honor. I mean,  
11 that's the whole purpose behind having an agent  
12 there. But if they're going to call me and if the  
13 Court is inclined, I'd like a 15-minute recess to  
14 prepare for that. I did not prepare for any of  
15 this. But just a 15-minute recess to talk with  
16 someone in our office.

17 THE COURT: All right. Well, we'll take a  
18 15-minute break.

19 MS. JACKS: Your Honor, I'd ask that Mr.  
20 Beck be ordered not to speak with Agent Sainato or  
21 Agent Stemo regarding this issue during the recess.

22 MR. BECK: I don't oppose that order, Your  
23 Honor.

24 THE COURT: All right. So ordered.

25 (The Court stood in recess.)

1 THE COURT: All right. If everybody is  
2 ready to go, we'll go on the record.

3 Ms. Armijo, it looks like you have  
4 something to say.

5 MS. ARMIJO: I do, Your Honor. The  
6 defense cannot call Mr. Beck without first complying  
7 with Touhy. As you know, DOJ employees are subject  
8 to Touhy. And so our office is not going to allow  
9 him to testify without Touhy being complied with.

10 That being said, we feel that there are  
11 other witnesses available to testify about this  
12 issue. We have Agent Sainato and Ms. Stemo  
13 available. And that is the whole reason why we have  
14 agents sit in on pretrial interviews, on debriefs,  
15 so that the United States does not become a witness  
16 to these meetings.

17 And so we can certainly proceed with that.

18 The good or bad faith issue is not really  
19 an issue at this point. What the Court should be  
20 focusing in on is whether or not, if there is a  
21 breach, if it's material; and whether it's -- what  
22 the proper remedy should be, if the Court finds that  
23 there is one, is if there's sufficient time to make  
24 use of the information.

25 And of course, we would argue that there

1 is sufficient time, even if the Court grants them  
2 the time over the weekend, or more time to deal with  
3 this issue.

4 So if the Court wants to proceed with the  
5 hearing, we would request that we start with Agent  
6 Stemo, or Agent Sainato who was on the stand, and  
7 that the defense comply with Touhy.

8 THE COURT: Thank you, Ms. Armijo.

9 MS. ARMIJO: Thank you, Your Honor.

10 THE COURT: Ms. Jacks, how do you wish to  
11 proceed?

12 MS. JACKS: Your Honor, I would request a  
13 continuance of 20 minutes. I'll provide a Touhy  
14 letter and provide it to the Government within that  
15 time period.

16 THE COURT: Let's go ahead and take up the  
17 witnesses. If y'all want to go that way, you can.  
18 I guess what I'd ask Ms. Armijo, you know, I have  
19 discovery disputes all the time. We've had lots of  
20 discovery disputes since I've been in the case.  
21 We've always gotten representations from the  
22 Government.

23 Would Mr. Beck be willing to at least  
24 answer questions, not under oath, but just as an  
25 attorney for the Department of Justice? The

1 defendants can direct their questions to the Court.  
2 But if Mr. Beck is willing to answer them, just as  
3 an officer of the Court?

4 MS. ARMIJO: I believe, Your Honor, that  
5 if you want me to go and call and see if that would  
6 be allowed, I certainly will do so. I feel  
7 uncomfortable, just given the conversation that we  
8 had with our administration, agreeing to that.

9 But certainly if Ms. Jacks is going to be  
10 preparing that, or during that time I can  
11 certainly -- or one of us, Mr. Castellano or I, can  
12 go out and call and find that information out. If  
13 the Court wants to proceed, one of us can do that.

14 THE COURT: Well, let's go ahead with the  
15 two FBI agents that we have, and then let's go --  
16 y'all got people that can probably check on that  
17 while we're doing it and get letters ready. But  
18 let's go ahead and use our time to get the testimony  
19 from the FBI agents.

20 MS. JACKS: Well, Your Honor, I just spoke  
21 with Ms. Bhalla and asked her to take either Agent  
22 Stemo or Sainato on the issue of the bag of Mario  
23 Rodriguez' property. And while she's doing that,  
24 I'll prepare the Touhy letter and submit it to the  
25 Government.



1 THE COURT: All right. So who do you want  
2 to call, Ms. Bhalla?

3 MS. BHALLA: I think that the -- you know,  
4 I may ask the Government for a representation as to  
5 who the best witness would be to ask about the box.  
6 Because my recollection is that Agent Stemo is the  
7 one who reviewed it. If that's the case, we'll  
8 start with Agent Stemo. If Sainato is the one who  
9 reviewed it, we can start with Agent Sainato.

10 THE COURT: All right. Is he still in the  
11 courtroom, or does he need to be brought in the  
12 courtroom?

13 MS. ARMIJO: I will get him, Your Honor.

14 THE COURT: All right. Mr. Sainato, if  
15 you'll come up and resume your place in the witness  
16 box. I'll remind you that you're still under oath.

17 A. Yes, sir.

18 THE COURT: Ms. Bhalla, if you wish to  
19 commence your examination, you may do so at this  
20 time.

21 MS. BHALLA: Thank you, Your Honor.

22 THE COURT: Ms. Bhalla.

23 DIRECT EXAMINATION

24 BY MS. BHALLA:

25 Q. Good afternoon.

1 A. Good afternoon, ma'am.

2 Q. Tell me how you say your last name so I  
3 don't butcher it.

4 A. Sainato.

5 Q. Agent Sainato, we're going to talk to you  
6 about the property box that belonged to Mario  
7 Rodriguez. Did you get a chance -- can you tell us  
8 how you came to know about that box's existence or  
9 how you found it?

10 A. I can start at the beginning.

11 Q. I'd appreciate that.

12 A. Sure, ma'am. The time line is kind of  
13 just based off of my memory. And my best  
14 recollection is that it was just starting to warm up  
15 in Santa Fe, so I'm ballparking, maybe like June of  
16 2017. I was at the penitentiary of New Mexico, PNM,  
17 with Task Force Officer Chris Cupit, and we were  
18 made aware that there was still some SNMers that had  
19 property in PNM's storage.

20 Q. Okay.

21 A. And so we decided while we were there,  
22 that we would take a look at it to see what was  
23 there. It was kind of a nonevent, so I'm fuzzy  
24 on --

25 Q. Is that when you found Mario Rodriguez'

1 box?

2 A. It was actually a bag, ma'am.

3 Q. A bag? Sorry.

4 A. But yes.

5 Q. And that was in June of 2015?

6 A. '17.

7 Q. '17. Sorry. See, I'm getting a little  
8 tired today. Okay.

9 A. I'm ballparking that, ma'am.

10 Q. Okay. June of 2017. Did you all go  
11 through that bag at that time?

12 A. No. We went through some other property.  
13 And that was his.

14 Q. Do you know who -- in addition to Mario  
15 Rodriguez' bag, were there other bags belonging to  
16 SNM members, or boxes, or whatever you want to call  
17 it?

18 A. There was other property that we looked  
19 at. Who it belonged to, I don't recall.

20 Q. Okay. You don't recall. Did you all have  
21 a warrant? What prompted you to go look for the  
22 property?

23 A. We were just made aware that it was there.

24 Q. Who made you aware of it?

25 A. I don't recall. It was one of the other

1 STIU officers.

2 Q. So was it an STIU? It was somebody who  
3 worked for STIU? It wasn't another FBI agent?

4 A. Correct.

5 Q. Okay. And so STIU made you aware that  
6 there was some property belonging to some SNM  
7 members?

8 A. Correct.

9 Q. And when you went to review that property,  
10 what was your understanding of the purpose of  
11 reviewing that property?

12 A. Just to see what was there, ma'am.

13 Q. Okay. Why did you go? Why did you want  
14 to go look at it? Did you receive information that  
15 it might be material or relevant to the case?

16 A. No.

17 Q. Okay. You were just told to go look  
18 through it?

19 A. We were just told that it was there.

20 Q. Okay.

21 A. And if we wanted to look through it, we  
22 could.

23 Q. And did you look through it at that time?

24 A. We looked through some of it there. What  
25 it actually was, it was inmate property, ma'am. It

1 was mostly clothes, shoes, books.

2 Q. Okay.

3 A. The only thing that sticks out in my  
4 mind -- and I know you're going to ask me, and I  
5 don't remember who it belonged to -- was that was  
6 the first time I'd ever seen what was called a  
7 fishing line, and Mr. Cupit explained to me what  
8 that was. And I had never seen that before.

9 Q. What did you do with the property after  
10 you went to see what was there?

11 A. Which property?

12 Q. The property -- so I'm assuming that this  
13 property was at PNM, correct?

14 A. One more time. I'm sorry.

15 Q. It was at PNM?

16 A. Correct.

17 Q. Okay. And when you went to view the  
18 property -- and you did view the property, or at  
19 least some of it?

20 A. Yes, ma'am.

21 Q. What did you do with it after you reviewed  
22 it?

23 A. Left it where it was.

24 Q. And where exactly was it in PNM?

25 A. They have a storage room, for lack of a

1 better word.

2 Q. Okay. Is it near the STIU offices? Is it  
3 associated with the STIU offices?

4 A. No. I believe it was in one of the  
5 facilities.

6 Q. Okay.

7 A. I don't recall specifically.

8 Q. At that time, did you look through the  
9 property belonging to Mario Rodriguez?

10 A. I don't recall if he had more than one  
11 bag. I would guess that he did, but I don't know.

12 Q. Would it help you, and would it maybe  
13 refresh your recollection if I showed you some of  
14 the property, as to what was there and what you may  
15 have reviewed?

16 A. Are you referring to the documents?

17 Q. Yes.

18 A. That, I did not review that day.

19 Q. Okay. Were you made aware of the  
20 existence of those documents that day?

21 A. I discovered them, yes, ma'am.

22 Q. Okay. So you discovered those documents  
23 in June of 2017?

24 A. Correct.

25 Q. Did you type up any kind of a report or

1 memorialize your review of that property on that  
2 date?

3 A. No, ma'am, I did not.

4 Q. Did anyone else with you make any kind of  
5 report regarding the property that you reviewed that  
6 day?

7 A. Not to my knowledge.

8 Q. Not to your knowledge?

9 A. No.

10 Q. That's fine. And did you go through the  
11 documents and look at them?

12 A. Those documents?

13 Q. Mario Rodriguez' documents?

14 A. Not that day, no.

15 Q. Okay. Did you ever go through Mario  
16 Rodriguez' documents?

17 A. I would, again, ballpark maybe two days  
18 later, a couple days later.

19 Q. Okay. So tell me about -- so you went,  
20 you looked at them, and you saw that they were  
21 there. You left, you came back, and that's when you  
22 reviewed the documents. Is that fair?

23 A. No.

24 Q. Okay. When did you review the documents?

25 A. Again, several days later.

1 Q. Several days later. And why did you come  
2 back to review the documents several days later?

3 A. I didn't come back to review them.

4 Q. Well, how did you review them?

5 A. I took them with me to the FBI office.

6 Q. Okay. So several -- okay. So when you  
7 left PNM, you took the documents with you?

8 A. Yes, ma'am.

9 Q. And they were kept at the FBI office?

10 A. Correct.

11 Q. And that was in June of 2017, give or  
12 take?

13 A. Approximately, yes, ma'am.

14 Q. And once you got the documents to the FBI  
15 office, what did you do with them?

16 A. I put the bag, I'm assuming, on my desk or  
17 near my desk to review at a later time.

18 Q. Okay. And did you review them at a later  
19 time?

20 A. I started to say, several days later Task  
21 Force Officer Cupit and I flipped through them  
22 quickly.

23 Q. Okay.

24 A. Didn't catch anything of note that we were  
25 potentially interested in at the time.



1 Q. When you say "potentially interested,"  
2 what specifically were you looking for?

3 A. Honestly, ma'am, we were looking for --  
4 well, at least I can't speak for Mr. Cupit, but I  
5 was just mainly flipping through to look for legal  
6 documents or discovery material.

7 Q. And what would you consider to be  
8 discovery material?

9 A. Specifically, what I was looking mainly  
10 and hoping to find that day was paperwork that would  
11 indicate somebody else had cooperated with law  
12 enforcement.

13 Q. Okay. Were you looking for other  
14 materials that may be relevant in your investigation  
15 into the Javier Molina homicide?

16 A. If the Javier Molina paperwork was there,  
17 that would have been something that we'd be  
18 interested in.

19 Q. Okay. And that's the only thing that you  
20 were looking for?

21 A. Or other discovery material.

22 Q. Or other discovery material. Were you  
23 aware that there was in fact discovery material in  
24 that box?

25 A. No, ma'am. Was there?

1 Q. Yes. And maybe what I can do is show you  
2 the documents that were in there, and maybe it will  
3 refresh your memory, or maybe you'll remember  
4 reviewing them, or maybe you won't.

5 But would it help for you to see what  
6 we're referring to?

7 A. Sure.

8 Q. Okay.

9 MS. BHALLA: May I approach, Your Honor?

10 THE COURT: You may.

11 MS. BHALLA: Your Honor, I think for  
12 purposes of everybody's convenience, it might be  
13 easier for everybody if we marked these as exhibits  
14 just for purposes of this hearing. Mr. Castellano  
15 indicated he may want to use these, as well. So  
16 does anybody have any objection to my doing that?

17 MR. CASTELLANO: I agree to that, Your  
18 Honor.

19 THE COURT: Well, I don't mind marking  
20 them, but it will just look like we were dealing  
21 with the pretrial motions. Let's just start with  
22 the Defendants' Exhibit A.

23 MS. BHALLA: Okay.

24 THE COURT: Does that work for you?

25 MS. BHALLA: It makes me happy. I don't

1 like keeping track of the other numbers.

2 THE COURT: All right. So let's do this:  
3 Defendants' Exhibit A -- and this will be -- I'm  
4 going to call this, for lack of anything else, Brady  
5 hearing exhibit.

6 MS. BHALLA: Okay. Thank you, Your Honor.

7 THE COURT: Ms. Bhalla.

8 BY MS. BHALLA:

9 Q. Did that refresh your recollection at all  
10 as to whether or not you recall seeing those  
11 documents in Mario Rodriguez' property?

12 A. To a degree.

13 Q. To a degree. Can you explain to us what  
14 you mean by that?

15 A. You know, I didn't catch which one was  
16 numbered what.

17 Q. Oh, I'm sorry.

18 MS. BHALLA: Just for the record, Your  
19 Honor, I've identified Defendants' Exhibit A and  
20 Defendants' Exhibit B. Let me take those back to  
21 the witness so he can describe them. I apologize.

22 THE COURT: All right.

23 MR. CASTELLANO: Your Honor, since this is  
24 a hearing for the Court, I don't object to using the  
25 visualizer if Ms. Bhalla wants to do that in order

1 to avoid kind of going back and forth.

2 MS. BHALLA: Thank you.

3 MR. CASTELLANO: That will give the Court  
4 a chance to look at the document, as well.

5 THE COURT: Okay.

6 MS. BHALLA: Thank you.

7 BY MS. BHALLA:

8 Q. This is what's been marked, Agent, as  
9 Defendants' Exhibit A. Can you tell us what that  
10 is, please?

11 A. That looks like notes of some sort. I  
12 don't believe that that was in Mr. Rodriguez'  
13 property. I think that somehow may have gotten  
14 mixed in when I was hurriedly making copies for the  
15 defense yesterday.

16 Q. Okay. So is it your testimony that this  
17 was not in fact contained in Mario Rodriguez'  
18 property?

19 A. I don't believe it was, ma'am.

20 Q. Okay. And would it surprise you to know  
21 that it was represented to at least the defense  
22 counsel that it was in fact contained in Mr.  
23 Rodriguez' property?

24 A. Very much so.

25 Q. Would you agree with me that this is

1 discovery related to the Javier Molina homicide, or  
2 that it contains information relating to the Javier  
3 Molina homicide?

4 A. Not specifically, no, ma'am.

5 Q. Well, or that it contains information  
6 related to the RICO investigation which involves  
7 three separate cases?

8 A. I suppose in generalities, sure.

9 Q. Well --

10 A. It looks like shorthand notes to me,  
11 ma'am.

12 Q. Right. And I think that those notes  
13 detail -- correct me if I'm wrong -- but the number  
14 of CHSS developed by the FBI within the SNM Gang;  
15 correct?

16 A. Yes.

17 Q. Okay. The number of undercover drug and  
18 firearm buys in the investigation of this overall  
19 RICO VICAR case?

20 A. Yes.

21 Q. The number of wiretaps in this case? And  
22 when I say "this case," I mean the overall federal  
23 investigation into the SNM.

24 A. Sure.

25 Q. Okay. And how many hours of recordings of

1 the ELSUR device are in this case?

2 A. That is also on this document.

3 Q. Okay. And this document goes on to list  
4 other information related to the FBI's investigation  
5 of the SNM RICO case; correct?

6 A. I don't disagree.

7 Q. Okay. Thank you.

8 Moving on, I'm going to show you what's  
9 been marked as Defendants' Exhibit B. Do you  
10 recognize this document?

11 A. Vaguely. Again, the amount of paperwork  
12 in this stack was voluminous.

13 Q. Okay. And that's okay. I'm not trying to  
14 trick you. Do you know or do you recall whether or  
15 not you found this document in Mario Rodriguez'  
16 property?

17 And if you don't recall, that's fine.

18 A. It looks somewhat familiar, but I couldn't  
19 say for sure.

20 Q. Okay, that's fine. Would you agree with  
21 me that this document details the video surveillance  
22 footage captured in the Javier Molina homicide?

23 A. Yes, ma'am.

24 Q. I'm going to now show you what I'm going  
25 to mark as Defendants' Exhibit C, and ask you if you

1 recall seeing this document in Mr. Rodriguez'  
2 property.

3 MS. BHALLA: Does the Government have an  
4 objection to me just putting this up on the Elmo?

5 MR. CASTELLANO: I don't, Your Honor.

6 THE COURT: Okay. Thank you.

7 BY MS. BHALLA:

8 Q. Can you see that okay where you are?

9 A. Yes, ma'am.

10 Q. Do you recall seeing this letter or like  
11 the outside of the letter in Mario Rodriguez'  
12 property?

13 A. Yes, ma'am.

14 Q. Okay. And would you agree with me that's  
15 a letter from Robin Martinez to Timothy Martinez?

16 A. Yes.

17 Q. And it's not addressed to Mario Rodriguez?

18 A. Correct.

19 Q. But it was in Mario Rodriguez' property?

20 A. Correct.

21 Q. Okay. Thank you. I'm going to take you  
22 to one of the pages in this document. Do you recall  
23 reading this letter contained in Mario Rodriguez'  
24 property?

25 A. No, ma'am, I don't.

1 Q. Okay. Is this the first time that you've  
2 read this letter?

3 A. I haven't read it yet.

4 Q. Okay. If you haven't read it, that's  
5 fine. I think that's my question. Have you read  
6 this letter before?

7 A. No, ma'am.

8 Q. How familiar are you with the Javier  
9 Molina investigation?

10 A. Generally.

11 Q. Okay. I mean, did you attend a lot of the  
12 debriefs? Did you have any information about like  
13 what the FBI was looking for in the investigation?  
14 How involved were you with this prosecution?

15 A. In general, a lot of specifics that have  
16 come about in the last month or so I'm not involved  
17 in.

18 Q. So is it fair to say that, you know, when  
19 you were reviewing this box, you may not have  
20 been -- let's put it this way: When you attended  
21 your training, did you attend your training at  
22 Quantico?

23 A. Yes, ma'am.

24 Q. Did they talk to you about what Brady  
25 information is or what Giglio information is?



1 A. Yes.

2 Q. And what's your understanding of what that  
3 is?

4 A. My understanding of Brady is, it's  
5 exculpatory evidence that would be beneficial to the  
6 defense.

7 Q. Okay.

8 A. Giglio would be impeachment material. And  
9 correct me if I'm wrong, ma'am.

10 Q. No, no. I'm just trying to figure out  
11 what your knowledge is. That's it. It's not a  
12 quiz. Don't worry. You won't be graded. I just  
13 want to know if that's your understanding?

14 A. Yes, ma'am.

15 Q. Okay. and --

16 MR. JEWKES: Your Honor, if we might have  
17 the agent speak up just a little bit, please?

18 THE WITNESS: Get a little closer. Is  
19 that better, sir?

20 MR. JEWKES: Yes.

21 BY MS. BHALLA:

22 Q. So just -- I don't want you to have to  
23 read the whole letter. I don't want to waste  
24 everybody's time. But can you just read the  
25 highlighted portion to yourself, and I'm going to

1 ask you some questions about it.

2 A. Okay.

3 Q. Are you ready?

4 A. Okay.

5 Q. Are you aware that part of the allegations  
6 or part of what happened in this case is that there  
7 were several defendants charged in state court, and  
8 that was Timothy Martinez, Jerry Montoya, and Jerry  
9 Armenta? Are you aware of that at all?

10 A. Yes, ma'am.

11 Q. And are you aware that there was some  
12 communication between Jerry Armenta and Jerry  
13 Montoya about one of them taking the rap for the  
14 murder in the state case?

15 A. That sounds vaguely familiar.

16 Q. So would you agree with me that if Mario  
17 Rodriguez was in possession of letters from Timothy  
18 Martinez and his wife discussing the fact that their  
19 versions of the stories don't match up, that that  
20 would be relevant and material to the defense in  
21 this case?

22 A. Potentially, yes, ma'am.

23 Q. Potentially. Okay. Thank you. I'm going  
24 to refer you to another page of this letter. We're  
25 still in Defendants' Exhibit C. Can you take a

1 moment to just read that highlighted portion. You  
2 don't have to read it out loud.

3 A. Okay.

4 Q. Do you know who Monster is?

5 A. I don't.

6 Q. If Monster were a code name for one of the  
7 government witnesses in this case, do you think that  
8 this might be material and relevant to the defense  
9 of this case?

10 A. If Monster were a code name for a  
11 government witness?

12 Q. Yes.

13 A. Potentially. I don't know who that is,  
14 ma'am.

15 Q. Okay. Thank you.

16 A. So I'm clear, that letter was from Timothy  
17 Martinez's wife?

18 Q. That letter, I'll represent to you --  
19 would you like to see the envelope again?

20 A. That was all from that same --

21 Q. Yes, it's all from the same letter.

22 A. No, I don't need to.

23 Q. And you would agree with me that that  
24 letter was not addressed to Mario Rodriguez?

25 A. If that was in that envelope, then, no,

1 ma'am.

2 Q. I'm going to show you what's been marked  
3 as Defendants' Exhibit D for purposes of this  
4 hearing. Does that also appear to be a letter from  
5 Robin Martinez to Timothy Martinez?

6 A. Yes, ma'am.

7 Q. And did you see or review this letter in  
8 the property box belonging to Mario Rodriguez?

9 A. I don't believe I had time to review the  
10 letters. But I did see several envelopes addressed  
11 to Timothy Martinez.

12 Q. And when you saw those envelopes addressed  
13 to Timothy Martinez, those were not -- those letters  
14 weren't meant for Mario Rodriguez? Do you know? I  
15 mean, they weren't addressed to Mario Rodriguez,  
16 were they?

17 A. No.

18 Q. But they were in Mario Rodriguez'  
19 property?

20 A. Correct.

21 Q. I want to direct your attention to the  
22 bottom highlighted paragraph in this letter. And  
23 you know what? Do you mind just reading that out  
24 loud where it starts "Yes"?

25 A. At the bottom?

1 Q. Yes.

2 A. "Yes, I will send this" -- I can't make  
3 that out.

4 Q. I think it says "deal."

5 A. "Yes, I will send this deal on to B. Does  
6 he know what really happened?"

7 Q. And do you know who B is?

8 A. I don't.

9 Q. If he were -- if B is referring to Mario  
10 Rodriguez, do you think that this would be  
11 beneficial and material for the defense to have  
12 before the trial of this case?

13 A. If that's who they're referring to,  
14 potentially, yes, ma'am. I don't know the context  
15 of that letter.

16 Q. Okay. And would you agree with me that  
17 it's difficult for us to try to ascertain the  
18 context of this letter now, before trial in this  
19 case?

20 A. I can't speak for you, ma'am.

21 Q. It's difficult for you to glean the  
22 context of it, seeing it right now, isn't it?

23 A. Yes, ma'am.

24 Q. Okay. Thank you. I'm going to show you  
25 one more letter that's been marked as Defendants'

1 Exhibit E. Is that another letter from Robin  
2 Martinez to Timothy Martinez?

3 A. It appears that way.

4 Q. Okay. And was this another one of the  
5 letters that you saw in the box or -- I'm sorry, I  
6 keep calling it a box -- in the bag of Mario  
7 Rodriguez' property?

8 A. I saw several, two or three.

9 Q. Two or three?

10 A. I believe so.

11 Q. Okay. I'm just going to ask you a couple  
12 of questions about this letter.

13 MS. BHALLA: Your Honor, what I think I'll  
14 do, this has already been marked as an exhibit. I  
15 think we've gone over some of the materials in the  
16 others. I think that's sufficient. I'll move on to  
17 the next one, Your Honor.

18 Q. I'm going to show you what's been marked  
19 as Defendants' Exhibit F. Okay, here we go. Can  
20 you read that okay?

21 A. On the monitor, ma'am?

22 Q. Are you ready?

23 A. Yes.

24 Q. Sorry. Would you agree with me that  
25 that's a letter from Mario Rodriguez to the county

1 clerk?

2 A. Yes, ma'am, it appears that way.

3 Q. And it's dated November 19th of 2014?

4 A. Correct.

5 Q. And this is a letter that was written  
6 after the Javier Molina homicide?

7 A. Yes.

8 Q. Are you aware that the allegation in this  
9 case is that Mario Rodriguez had paperwork passed to  
10 him and that's part of why the Javier Molina murder  
11 happened, at least according to the Government?

12 A. Yes, I'm familiar with that.

13 Q. And if in fact Mario Rodriguez was  
14 requesting case materials on other murders, or case  
15 materials on other cases, right, so he's -- would  
16 you agree with me that he's writing to the clerk,  
17 asking for information contained in the Court file?

18 A. Yes. It appears, yes.

19 Q. Okay. And you don't know, do you, what  
20 the case he's requesting is about?

21 A. I don't.

22 Q. But that might be something we would want  
23 to know, right?

24 A. Potentially, yes.

25 Q. Yeah. And that might be material and

1 relevant to the defense of this case if Mario  
2 Rodriguez was requesting information on -- let's  
3 just call this another homicide case?

4 A. If that's what it is. I don't know what  
5 it is, ma'am. But I'll agree with you.

6 Q. Okay. And would it be even more important  
7 if Mario Rodriguez was never a suspect or never  
8 implicated in that murder, and he was trying to get  
9 paperwork or case materials on someone other than  
10 himself?

11 A. Say that one more time.

12 Q. If he were trying to get information about  
13 a case that had nothing do with him, and it was  
14 about somebody else or somebody else's case,  
15 wouldn't that be even more important in the context  
16 of the Javier Molina homicide?

17 A. Potentially, yes.

18 Q. Potentially. Let's look at the next one,  
19 Defendants' Exhibit G. Can you just take a moment  
20 the read that, please.

21 A. Okay.

22 Q. Would you agree with me that's another  
23 letter from Mario Rodriguez to the county clerk?

24 A. Yes.

25 Q. And would you agree with me that it's



1 referencing the same case number as the previous  
2 letter?

3 A. I would have to look at them next to each  
4 other, but if you say --

5 Q. That's probably better for the record  
6 anyway. Let's do that. Can you tell us when you  
7 find the case number. I can help you look.

8 A. 905-CR-2007-724.

9 Q. And is that the same case number in  
10 Defendants' Exhibit G?

11 A. 905-CR-2007-724. Yes, ma'am.

12 Q. And would you agree with me that this  
13 letter to the clerk is dated December 20th of 2014?

14 A. Yes.

15 Q. And would you agree with me that this  
16 letter occurred after the Javier Molina homicide?

17 A. Yes.

18 Q. And would you agree with me that in this  
19 letter, Mario Rodriguez represents, at least to the  
20 clerk, that the case materials in the discovery or  
21 the case file in this particular CR number is  
22 related to an appeal that is material or has  
23 something to do with him?

24 A. I'll just read the sentence that you're  
25 referring to.

1 Q. Sure.

2 A. It says, "I need these records for legal  
3 reasons regarding a legal defense for a appeals  
4 process."

5 Q. Okay. Now, if in fact this letter did not  
6 have anything to do with an appeal for Mario  
7 Rodriguez, would that be important to your  
8 investigation?

9 A. Yes.

10 Q. And it's something you would want to know  
11 more about?

12 A. Potentially.

13 Q. Don't you want to know pretty much  
14 everything there is to know when you're  
15 investigating a homicide?

16 A. Yes.

17 Q. So would you agree with me if Mario  
18 Rodriguez were representing, at least to the Court,  
19 that he was interested in paperwork that didn't have  
20 anything to do with him, that that would be  
21 something you guys would be interested in as FBI  
22 agents?

23 A. If. Yes, ma'am.

24 Q. Yes. Okay. Thank you. I'm going to show  
25 you what's been marked next as Defendants' Exhibit

1 H, and given that this is a lengthy document I may  
2 approach just to go over this with you, if that's  
3 all right.

4 Would you agree with me that this  
5 Defendants' Exhibit H contains addresses and  
6 identifying information for various lawyers and at  
7 least one judge?

8 A. Yes, ma'am. This looks like the address  
9 book that was in Mr. Rodriguez' property.

10 Q. So you were aware then that Mario  
11 Rodriguez' property contained an address book with  
12 people's personal information in it or personal  
13 addresses?

14 A. Are you referring to this page  
15 specifically, or in general?

16 Q. In general. But we can refer to this page  
17 specifically, if that's easier.

18 A. I don't know if there is any home  
19 addresses. Those look more like P.O. boxes and  
20 mailing addresses. They look more like P.O. boxes,  
21 mailing addresses, office addresses. I don't think  
22 anything on there is a home address. But correct me  
23 if I'm wrong. I believe that's the courthouse,  
24 ma'am.

25 Q. Okay. And if we look through this to the

1 next page, would you agree with me that Jerry  
2 Montoya and Jerry Armenta are listed in that address  
3 book?

4 A. Their names are there, yes.

5 Q. Would you agree with me that it appears  
6 that their date of the birth and their Social  
7 Security numbers are listed on this address book?

8 A. I see Jerry Montoya's Social Security  
9 number. Is Armenta's -- I can't make that out.

10 Q. Okay. Let's take it question by question.  
11 Do you see Jerry Montoya's Social Security number on  
12 this document?

13 A. I don't know that that's his, but there is  
14 a Social Security number listed next to his name.

15 Q. And next to Jerry Armenta's name there is  
16 a long number with several digits that could -- or  
17 could it be a Social Security number?

18 A. Possibly.

19 Q. In this address book, it appears that  
20 there is a legend that details four directions, four  
21 seasons, four parts of the day, and four divisions  
22 of life. Would you agree with me that that is  
23 contained in this document?

24 A. Yes, ma'am.

25 Q. Are you aware that Mario Rodriguez

1 previously testified that he was given some sort of  
2 map or plan from one of the defendants in this case  
3 detailing divisions similar to the divisions  
4 contained in this address book?

5 A. No, ma'am. I don't know what Mr.  
6 Rodriguez testified to.

7 Q. Okay. If Mr. Rodriguez provided that  
8 testimony, do you think that this information would  
9 be something that the defendants would have used in  
10 assessing his testimony?

11 A. I could agree with that -- could you  
12 repeat the question. I'm sorry.

13 Q. Yes. I may have to get it read back to  
14 me. Would you agree with me that if Mr. Rodriguez  
15 testified about some sort of similar division of the  
16 SNM, or division of responsibilities, as is  
17 contained in this address book, that it would have  
18 been relevant or material to the defendants' ability  
19 to assess that testimony or to cross-examine him on  
20 those statements?

21 A. Again, I don't know what Mr. Rodriguez  
22 testified to. But potentially.

23 Q. Okay. I'm going to show you another page  
24 in this address book, and it lists J. Ray Armenta.  
25 Do you know who that is?

1 A. I don't.

2 Q. Okay. It also lists Montoya. Is that  
3 correct?

4 A. The name "Montoya" is written there.

5 Q. And does it appear to have FBI numbers or  
6 case numbers or some sort of other identifying  
7 information in that address book?

8 A. They don't look like FBI numbers. Oh,  
9 there is -- "FBI" is written there. I would agree  
10 with you that they're some sort of identifying  
11 numbers. I don't know what they are.

12 Q. I'm going to show you the next page. It  
13 appears that Timothy Martinez's name is written  
14 down. Does it contain what appears to be his Social  
15 Security number?

16 A. There is a number next to it that looks  
17 like a Social Security number, as well as a date of  
18 birth. I don't know if that's his or not.

19 Q. Okay. I'm going to move on to Defendants'  
20 Exhibit I. Are you aware whether or not Mr.  
21 Rodriguez made threats to any of the other  
22 government witnesses in this case when he was  
23 attempting to get them to participate in the Javier  
24 Molina murder?

25 A. I don't know.

1 Q. Okay. And you're going to have to follow  
2 me a little bit on this. I know that you don't know  
3 the answer, but I want to pose to you a  
4 hypothetical.

5 If that testimony came out, that Mario  
6 Rodriguez had frightened other people into  
7 cooperating in the murder of Javier Molina, do you  
8 think that his admission to making other threats or  
9 to intimidating other inmates on previous occasions  
10 would be relevant and material as part of the  
11 investigation in this case?

12 A. Hypothetically, I suppose so.

13 Q. Okay. So I'm going to direct your  
14 attention, then, to Defendants' Exhibit I. Does  
15 this look like some of the pages and pages and pages  
16 of materials that were found in Mario Rodriguez'  
17 property bag?

18 A. It looks like it, yes.

19 Q. So that looks like some of the writing  
20 that you reviewed?

21 A. Yeah.

22 Q. I'm not going to hold it against you if  
23 you didn't read all of it. It was painful. But  
24 does it at least look like some of it that you read?

25 A. It appears to be, ma'am.

1 Q. Can you please read the highlighted  
2 sections?

3 A. Can you slide it up?

4 Q. Yes. Sorry.

5 A. Thank you. Would you like me to read it  
6 out loud?

7 Q. Yes, please.

8 A. What's highlighted is, "Plus he was scared  
9 of me. Even when I was asleep he was scared. One  
10 day" --

11 Q. Oh, I skipped -- can you read the whole  
12 thing? I'm sorry.

13 A. Where would you like me to start?

14 Q. Just keep going down.

15 A. "One day during court he told me he  
16 couldn't sleep. Why is that? He told me it was  
17 because of me. He went on to explain that I" --

18 Q. Okay. I think that's good enough for that  
19 page. I'm going to go on to the next page and ask  
20 you to read the bottom highlighted paragraph. Can  
21 you see it okay?

22 A. Yes, ma'am. "I was written up for assault  
23 and threats. I threatened to smash him first chance  
24 I got. I fought as much as I could down the tier  
25 steps and out the pod. I heard a homie yell out for



1 them to leave me alone."

2 Q. So do you think that the fact that Mario  
3 Rodriguez admitted to framing another inmate and  
4 that another inmate was afraid of him and that he  
5 was written up for threats and assaults would be  
6 relevant and material, given the hypothetical that I  
7 posed to you in this case?

8 A. I don't know the context of those  
9 writings, ma'am. When I was thumbing through them,  
10 it looked like a lot of them were for a creative  
11 writing class that he was taking. But I'll agree  
12 with you that, yes.

13 Q. Okay. Did you happen to see letters  
14 written from Gerald Archuleta to Mario Rodriguez  
15 contained in Mario Rodriguez' property?

16 A. I didn't catch that.

17 Q. So you didn't review those letters?

18 A. No.

19 Q. If I represented to you that Gerald  
20 Archuleta testified that he didn't -- he wasn't part  
21 of the SNM -- let me ask you this way: Are you  
22 aware that when he was released from custody, Gerald  
23 Archuleta was relocated to Tennessee?

24 A. Yes.

25 Q. And were you aware that he denied having

1 any contact with SNM members when he was in  
2 Tennessee?

3 A. I can't say to that. I'm not sure.

4 Q. And that's okay. I'll ask it to you this  
5 way: If he testified that he had limited or that,  
6 you know, he didn't really have contact with many  
7 SNM members when he was in Tennessee, and he wrote  
8 letters while he was in Tennessee to SNM members,  
9 don't you think that that would tend to show that he  
10 wasn't telling the truth about that?

11 A. Again, I don't know what his testimony  
12 was, but I agree with your hypothetical.

13 Q. Okay. So if that was his testimony, it  
14 would have been important for us to see the letters  
15 proving that what he testified to wasn't true?

16 A. Yes.

17 Q. Okay. And I'm going to go ahead and mark  
18 that letter as Defendants' Exhibit J, and I'll show  
19 that to you, to the agent. Did you get a chance to  
20 take a look at that letter?

21 A. Yes.

22 Q. You'd agree with me that it doesn't have  
23 Gerald Archuleta's name on it, correct?

24 A. Correct.

25 Q. Okay.

1 A. And you did point to a 913 or 931?

2 Q. Yeah.

3 A. Okay.

4 Q. And, you know, I'll represent to you that  
5 that's a Tennessee area code.

6 A. I'll take your word for it.

7 Q. You may not have known that, but knowing  
8 that there is a phone number directed to an SNM  
9 member that contains a Tennessee area code, do you  
10 think it's logical, or at least practical, to assume  
11 that there's a high probability that this letter  
12 could have come from Gerald Archuleta?

13 A. Potentially, yes.

14 Q. Okay. Thank you. Did you get a chance --  
15 did you notice that there were other inmates'  
16 property contained in Mario Rodriguez' property?

17 A. Other than those three letters to Timothy  
18 Martinez, no.

19 Q. And the letter from -- the letter from  
20 somebody else that I just showed you, Defendants'  
21 Exhibit J?

22 A. Oh, I'm sorry. Are you considering  
23 letters not written by Mr. Rodriguez to not be his  
24 property?

25 Q. No, not necessarily. I'm just asking

1 if -- that's a good point. You're right about that.  
2 Did you get a chance to -- or did you ever notice  
3 that there were commissary order forms from Mauricio  
4 Varela in his property?

5 A. I don't believe I saw that.

6 Q. Okay. Would it refresh your recollection  
7 if I showed that one to you?

8 A. Probably not.

9 Q. That's okay. I'm going to show you  
10 anyway, just in case, and if it doesn't refresh your  
11 recollection, that's fine. I'm going to show you  
12 what's been marked as Defendants' Exhibit K. Do you  
13 recall seeing Mauricio Varela's commissary form in  
14 Mario Rodriguez' property?

15 A. Prior to you just showing it to me, no,  
16 ma'am.

17 Q. Okay. Now that you've seen it, do you  
18 recall seeing it at the time that you went through  
19 Mario Rodriguez' property?

20 A. No, ma'am.

21 Q. Okay. That's fine.

22 MS. BHALLA: May I have a moment, Your  
23 Honor?

24 THE COURT: You may.

25 Q. I just have a couple of follow-up

1 questions, but I think we're done with the exhibits.  
2 I'll leave them up here. Agent Sainato, after you  
3 reviewed the documents, did you do anything with  
4 them after that?

5 A. Are you talking about when I initially had  
6 them in summer of '17?

7 Q. Yeah, I -- and let me just do this: Let  
8 me make sure I understand your testimony. So in the  
9 summer of 2017, after you found the documents at PNM  
10 or after you were alerted to their existence -- you  
11 don't remember who alerted you to their existence?

12 A. I don't.

13 Q. Okay, that's fine. But in any event, it  
14 caused you to go to PNM to take a look at the  
15 documents or to see what was there?

16 A. I believe we were already at PNM, if I  
17 remember correctly. And while we were there on an  
18 non-related matter, we just went down to that room  
19 to see what was there.

20 Q. Okay. But you went down to that room to  
21 see what was there because someone alerted you to  
22 the fact that there was property there?

23 A. That is what I remember.

24 Q. Okay. And after -- at some point you went  
25 back and picked it up and took it to your office; is

1 that fair to say?

2 A. No, ma'am. We went through what was -- we  
3 went through some of it there the day of.

4 Q. Okay.

5 A. The reason that I took this bag is because  
6 it was the only thing that could potentially warrant  
7 some more --

8 Q. Investigation?

9 A. I don't want say investigation, just a  
10 closer look.

11 Q. Okay. So at least in June of 2017, when  
12 you saw the documents, you thought: Okay, maybe  
13 this is something we should look at?

14 A. I wanted to -- again, like I said before,  
15 I wanted to just flip through to see if there was  
16 any legal documents or discovery material.

17 Q. And that prompted you to take those  
18 documents to your office?

19 A. So that I didn't have to stand in the  
20 prison and do it, yes, ma'am.

21 Q. I totally get that. But you took them to  
22 your office, is my question?

23 A. Yes.

24 Q. And when you were at your office, you at  
25 least flipped through them to see if there was

1 anything relevant to the case?

2 A. Quickly, but yes, ma'am.

3 Q. Okay. And after you flipped through it  
4 quickly, what did you do?

5 A. I went through it with Task Force Officer  
6 Cupit, and we kind of didn't see anything offhand  
7 that looked like discovery material or anything, so  
8 I placed them in a box that I had at my desk to  
9 return to PNM at some point.

10 Q. And did you ever return this to PNM?

11 A. No, ma'am. It got mixed in with another  
12 box under my desk, and I subsequently forgot that it  
13 was there.

14 Q. How did you discover the box after that,  
15 and when did you discover the box after this?

16 A. Let's see. So I went to a three-week SWAT  
17 training, for three weeks of February, and I got  
18 back last week. And the box that -- this box in  
19 question was inside of contained accessories and  
20 parts to my ballistic vest.

21 Q. Okay.

22 A. And because I had the SWAT stuff recently  
23 on my mind, I went through that box to see what I  
24 had and if I needed anything, or just to kind of  
25 gear check, gear maintenance inspection. That's

1 when I discovered that box containing the property  
2 was still there.

3 Q. And I think you said that was last week?

4 A. That was on Friday of last week, so the --  
5 I'd have to look at a calendar.

6 Q. Just this past Friday?

7 A. Yes, ma'am.

8 Q. And once you saw the box, did you go  
9 through it again?

10 A. No, ma'am. I was going off memory. I  
11 recalled it just being letters to friends and  
12 family, and I want say creative writings from -- or  
13 like class writings, essays.

14 Q. Okay.

15 A. And I didn't think that it would be  
16 important or relevant. So I gave it to Officer  
17 Cupit to take back.

18 Q. To PNM?

19 A. Correct.

20 Q. And then do you know what Officer Cupit  
21 did with the box?

22 A. I was alerted on Sunday that he'd given it  
23 to Agent Stemo to bring down to Las Cruces.

24 Q. And that's the last that you know of the  
25 box or the bag?



1           A.     No.    When they alerted me on Sunday  
2 evening, the 25th maybe -- I'm guessing on the  
3 date -- I received a call Sunday evening from Agent  
4 Stemo and Mr. Cupit with regards to that property.  
5 And Agent Stemo informed me that she'd found a  
6 document in there as she was going through it just  
7 to make sure there was no contraband in it before  
8 she gave it back. She alerted me that there was a  
9 document with statements about the Molina homicide.

10               When I was alerted to that, I immediately  
11 called the case agent, Mr. Acee, or Special Agent  
12 Acee, and informed him what we had discovered. And  
13 then I drove to the office and called AUSA Armijo to  
14 alert her as to what we'd found, as well. I then  
15 read -- or I had read the document that Agent Stemo  
16 had found, and immediately wrote a report which I --  
17 there was nobody there to approve on Sunday evening,  
18 so I wrote it in an e-mail and sent it, along with a  
19 scanned copy of that document, to Ms. Armijo, Mr.  
20 Castellano, and Mr. Beck.

21               MS. BHALLA: Okay. I think that's all I  
22 have right now, Your Honor. But I think a couple of  
23 other people may have questions for the agent, if I  
24 may pass the witness.

25               THE COURT: All right. Thank you, Ms.

1 Bhalla.

2 MS. BHALLA: Thank you, Your Honor.

3 THE COURT: Anyone else have direct  
4 examination of Mr. Sainato.

5 Mr. Villa.

6 BY MR. VILLA:

7 Q. Good afternoon, Agent Sainato.

8 A. Good afternoon.

9 Q. So when you received the documents at PNM  
10 and took them to your office, I guess for  
11 convenience sake to review them there, did you  
12 prepare a 302 for that?

13 A. No, sir. I was waiting to see if I found  
14 anything relevant before preparing a report.

15 Q. And when did you prepare a report  
16 concerning the relevance of those documents?

17 A. Are you referring to the report I wrote on  
18 Sunday?

19 Q. You tell me. I don't know when you wrote  
20 your report. Did you write a report before Sunday?

21 A. No, sir.

22 Q. So you received the documents in the  
23 summer from PNM, right?

24 A. Right.

25 Q. Took them to your office?

1 A. Right.

2 Q. Conducted a review?

3 A. If we can call it that. I flipped through  
4 it.

5 Q. Flipped through them. And at the time,  
6 Mario Rodriguez had not entered into an agreement to  
7 cooperate with the Government yet, had he?

8 A. Correct. He was not cooperating.

9 Q. So potentially there was evidence in this  
10 stack of documents that could be used against him.  
11 You didn't know, did you?

12 A. No, sir.

13 Q. So, I mean, there might have been some  
14 documents in there that potentially inculcate Mr.  
15 Rodriguez in the two cases in which he was charged  
16 by the federal government, right?

17 A. Correct.

18 Q. But you only flipped through them?

19 A. Correct.

20 Q. And you only wrote a report about the  
21 contents of those documents on Sunday?

22 A. Correct.

23 Q. And didn't write any other reports  
24 concerning the acquisition of this property?

25 A. Correct.

1 Q. Now, you testified, I think, at one point  
2 when Ms. Bhalla was showing you some documents, that  
3 some of the letters Mr. Rodriguez wrote, you didn't  
4 have time to review those?

5 A. That's correct.

6 Q. Did you ask another agent the review them?

7 A. At one point, when we had it here in the  
8 last couple of days, Agent Stemo went through some  
9 of it with me.

10 Q. That was the only time you asked?

11 A. Yes.

12 Q. Did you inform anybody other than -- well,  
13 let's back up. We know Officer Cupit knew, because  
14 he helped you look at some of the documents in June,  
15 right?

16 A. Correct.

17 Q. Who else knew you had them at that time?

18 A. I don't believe anybody. I'm not sure.

19 Q. When was the next time you informed  
20 anybody that you had those documents?

21 A. I suppose Sunday, the 25th.

22 Q. But the documents remained under your desk  
23 until this past weekend?

24 A. Yes, sir.

25 Q. From the time you took them?

1 A. Yes.

2 Q. That's your desk in the Albuquerque  
3 office?

4 A. Yes, sir.

5 Q. Is that the desk that you work at pretty  
6 much on a regular basis?

7 A. Yes, sir.

8 Q. And you've been working on the SNM  
9 investigation for how long?

10 A. Approximately two-and-a-half years. Two  
11 years, two-and-a-half years.

12 Q. You knew in June, when you got Mr.  
13 Rodriguez' property, that he was charged in two  
14 separate indictments; correct?

15 A. Yes, sir.

16 Q. And did you have any long vacation time  
17 between June and this past weekend, that you weren't  
18 at your desk?

19 A. No, sir.

20 Q. So you're pretty much at your desk every  
21 day that you were there working in Albuquerque?

22 A. Yes, sir.

23 Q. You don't have any other desks, do you?

24 A. No, I don't.

25 Q. Was there anything obstructing your view

1 of this bag of material that was under your desk  
2 that -- you know, you put your mountain bike under  
3 there, or something, and you couldn't see it?

4 A. I believe I said earlier that it was in  
5 another box that had that gear and other stuff in  
6 it; had rifle bags, backpacks, just general SWAT  
7 gear under there, as well. So it's not like it was  
8 just sitting on my desk and I looked at it every  
9 day. So it was kind of in a corner, and I'd  
10 forgotten about it.

11 Q. It was on top of your desk or under your  
12 desk?

13 A. Under.

14 Q. How big is your desk?

15 A. I don't know. It's an L-shaped desk,  
16 regular cubicle sized.

17 Q. Not like a giant desk or oversized or  
18 anything like that?

19 A. I see what you're getting at. No, sir,  
20 it's not.

21 Q. Does the desk have sides so that you can't  
22 see under it unless you're sitting behind it?

23 A. No, sir.

24 Q. So if you're standing at the side of the  
25 desk, you can see under it?

1 A. Yes, sir.

2 Q. And if you're standing at the other side  
3 of the desk, can you see under it?

4 A. We're splitting hairs. You can see under  
5 it from most of the points of view in my cubicle,  
6 yes.

7 Q. So is it like -- is it a 360 view? Can  
8 you walk around the desk?

9 A. No. It's a cubicle.

10 Q. It's a cubicle.

11 A. Yes.

12 Q. So how many sides are there? Three sides?

13 A. Yes.

14 Q. Can you see under all three sides?

15 A. No. I have filing cabinets kind of on the  
16 end caps.

17 Q. I assume you were made aware that Mario  
18 Rodriguez cooperated with the Government October 24,  
19 2017?

20 A. I don't know the exact date, but that  
21 sounds accurate.

22 Q. Did you become aware of his cooperation  
23 the day that he cooperated?

24 A. I'm not sure.

25 Q. How did you learn about his cooperation?

1           A.     Through the other agents. I don't  
2 remember specifically, but I was made aware of his  
3 cooperation.

4           Q.     Were you present for any of his debriefs  
5 or interviews?

6           A.     No, sir.

7           Q.     When the 302s and other material from the  
8 debriefs and interviews came out, did you read them?

9           A.     No, I did not.

10          Q.     Now, you mentioned, referring to Mr.  
11 Rodriguez' writings, that they appeared to be  
12 creative writings?

13          A.     That was my recollection.

14                 MR. VILLA: Your Honor, could I approach  
15 and show him a couple of documents and ask if he's  
16 seen them?

17                 THE COURT: You may.

18          Q.     The first document has a Bates number on  
19 it, does it not?

20          A.     It does.

21          Q.     And it's U.S. v. DeLeon et al., 52007  
22 through 52022?

23          A.     That is what you're showing me.

24          Q.     And I'll let you look at it. Just for  
25 reference, it's a document entitled, "The writings



1 of Mario Rodriguez"?

2 A. It is titled that.

3 Q. Can you take a look at that and let me  
4 know if you've ever seen that before?

5 A. This doesn't look familiar at all, sir.  
6 Most of what was in there was handwritten, and this  
7 is typed.

8 Q. I'm not telling you that it did or didn't  
9 come from that box. I'm just asking if you've ever  
10 seen it before?

11 A. No, I have not seen this at all.

12 Q. Were you aware of Mario Rodriguez'  
13 writings, outside of the letters we've been talking  
14 about today?

15 A. No, sir.

16 Q. I'll show you the second one. This is  
17 Bates Numbers 51999 through 52002, right?

18 A. Correct.

19 Q. And it's entitled, "An essay by Mario  
20 Rodriguez, Inmate Level 6"?

21 A. It is.

22 Q. I'll let you look at that, if you'd like.  
23 Agent Sainato, have you ever seen that document  
24 before?

25 A. No, sir.

1 Q. And you would agree with me that Level 6,  
2 you're aware through your investigation, is at PNM?

3 A. Correct.

4 Q. And that's where you went to obtain the  
5 documents that you obtained from Mario Rodriguez?

6 A. That is where I got them, yes.

7 Q. And I'll represent to you that the two  
8 documents I just showed up were produced by the  
9 Government February 5th, 2018, about a week into  
10 this trial. Are you aware that these documents were  
11 being produced?

12 A. No, sir.

13 Q. And it's your testimony that the two  
14 documents I just showed you were not in the  
15 documents that were contained in this bag that sat  
16 on your desk?

17 A. I don't believe they were. I don't know.

18 Q. You're not sure because you're not 100%  
19 familiar with the 800, 900 pages that were in there,  
20 correct?

21 A. That's correct.

22 Q. Let me show you one more.

23 MR. VILLA: May I approach, Your Honor?

24 THE COURT: You may.

25 Q. Well, I'll mark this, sir, as a

1 Defendants' Exhibit, but this looks like one of the  
2 writings of Mario Rodriguez that you looked through?

3 A. It looks like it, yes, sir.

4 Q. Then I've highlighted here a statement  
5 that says, "I just laughed at him. His cowardice  
6 amused me back then. I thrived off being feared. I  
7 enjoyed it. Even if he was a middle-aged sissy, all  
8 that mattered was he feared me."

9 Did I read that right?

10 A. Yes, sir.

11 Q. Getting back to Ms. Bhalla's questioning  
12 of you about the allegations in this case, it's your  
13 testimony that you weren't aware that Mario  
14 Rodriguez made a statement to Nancy Stemo that when  
15 he took Mr. Perez' piece from Mr. Perez' walker to  
16 make the shanks to kill Javier Molina that Mr. Perez  
17 appeared scared and in fear?

18 A. Again, I don't know what Mr. Rodriguez  
19 testified to.

20 Q. Well, I wasn't asking you about his  
21 testimony. I'm asking you about the statement he  
22 made to Nancy Stemo October 24, 2017.

23 A. I didn't read that report, sir.

24 Q. Did Nancy Stemo talk to you about the  
25 report?

1 A. I don't recall.

2 Q. Agent Acee?

3 A. I don't recall that either.

4 Q. But you do know that they talked to you  
5 about the fact that they had cooperated and  
6 debriefed with the federal government?

7 A. Yes, I knew he was cooperating.

8 Q. Okay.

9 MR. VILLA: And, Your Honor, actually the  
10 document I showed Agent Sainato, I won't mark and  
11 admit. But I would like to mark as next Defendants'  
12 Exhibit L and ask that it be admitted. I'll show it  
13 to Mr. Castellano.

14 Your Honor, Mr. Castellano informs me that  
15 he does not object.

16 THE COURT: Anyone else have any  
17 objection? Not seeing or hearing any, Defendants'  
18 Exhibit L will be admitted.

19 MR. VILLA: I'll show Ms. Duncan. I don't  
20 think there is any objection, Your Honor.

21 THE COURT: Not hearing any objection,  
22 Defendants' Hearing Exhibit L will be admitted into  
23 evidence.

24 (Defendants' Exhibit L admitted into  
25 evidence.)

1 MR. CASTELLANO: May I have a moment, Your  
2 Honor? There's some email addresses and things of  
3 that nature. I'd just ask that it be redacted. It  
4 doesn't have to be today, but before it becomes part  
5 of the record, I would just seek redaction of those  
6 materials.

7 THE COURT: Is that all right with you,  
8 Mr. Villa?

9 MR. VILLA: Your Honor, there's no  
10 objection. This is an email that was prepared  
11 purportedly by Agent Sainato, to Ms. Armijo, Mr.  
12 Castellano, and Mr. Beck, describing the situation  
13 with the box, and it's a forwarded to -- or an email  
14 sent to Ms. Fox-Young, via a forward, as well as a  
15 lot of others. So there are a lot of emails on  
16 there that we can have redacted before it's provided  
17 to the Court to be admitted, if that's okay.

18 THE COURT: Okay. That's fine.

19 MR. VILLA: And may I approach one more  
20 time?

21 THE COURT: You may.

22 BY MR. VILLA:

23 Q. Agent Sainato, I'm showing you Defendants'  
24 Exhibit L. It's been admitted. Take a look at that  
25 on the second page. Is that an email that you wrote

1 to all three United States Attorneys?

2 A. Yes, ma'am -- or sir. Sorry.

3 Q. And you wrote it on February 25, 2018?

4 A. Correct.

5 Q. And this concerns what you've been  
6 testifying about with the box?

7 A. Correct.

8 Q. The last thing I want to show you, since  
9 I'm up here, you talked with Ms. Bhalla about some  
10 of the information Mr. Rodriguez had, including  
11 other people's personal information, right?

12 A. We spoke about that, yes.

13 Q. Okay. So I'm showing you a page from this  
14 box, I guess, or the bag. Does this appear to have  
15 Mr. Perez' name, Social Security number, date of  
16 birth, some other number, and home address?

17 A. Again, I don't know Mr. Perez' identifiers  
18 or address offhand. But I agree with you that that  
19 appears to be that way.

20 Q. It looks like a Social Security number?

21 A. Correct.

22 Q. It looks like a date of birth?

23 A. Yes.

24 Q. And it looks like a home address in  
25 Carlsbad?

1           A.     It's an address, yes, sir.

2                   MR. CASTELLANO:   Your Honor, before we  
3 proceed, my understanding from Ms. Fox-Young is that  
4 that document was also filed as Docket 1844.   I  
5 would just seek either sealing of that document or  
6 redactions to that document, as well.

7                   THE COURT:   How do you want to proceed?  
8 Do you want to do it as redactions or seal it?

9                   MR. VILLA:   Sealing seems like the easiest  
10 way to do it.

11                   THE COURT:   All right.

12                   MR. VILLA:   Just the exhibit.

13                   THE COURT:   Without any objections,  
14 Document 1844 will be sealed.

15                   MS. FOX-YOUNG:   Your Honor, perhaps just  
16 1844-1, the exhibit to Document 1844.

17                   THE COURT:   What do you want, Mr.  
18 Castellano?   Do you want the whole thing sealed, or  
19 just Document 1?

20                   MR. CASTELLANO:   I don't know what the  
21 rest of that document is, Your Honor.

22                   THE COURT:   What's the rest of it, Ms.  
23 Fox-Young?

24                   MS. FOX-YOUNG:   It's the motion to  
25 dismiss, Your Honor.

1 THE COURT: This is a document that Mr.  
2 Perez just filed within the last few minutes, I  
3 guess. Do you want to take a look at it, Mr.  
4 Castellano?

5 MR. CASTELLANO: Please, Your Honor.

6 THE COURT: All right. I'll hand it back  
7 to Ms. Standridge. She can show it to you. That's  
8 my copy, so if you'll give it back to me when you  
9 have a chance.

10 MR. VILLA: I don't know if we want to  
11 just seal this exhibit in lieu of redacting it.  
12 We'd be happy to redact. It's the same thing, the  
13 same document.

14 THE COURT: I think we've already decided  
15 to redact your document. Now we're deciding what to  
16 do with this one, whether we're going to seal this  
17 one or just seal the attachment to it.

18 MR. CASTELLANO: Your Honor, I'm fine with  
19 just sealing the attachment, which is 1844-1.

20 THE COURT: Any objection to that?

21 MS. FOX-YOUNG: No, Your Honor.

22 THE COURT: 1844-1 will be sealed, but the  
23 motion itself will not be sealed.

24 MS. BHALLA: Your Honor, for the record,  
25 the defendants' exhibits that we discussed for



1 purposes of this hearing should probably also be  
2 sealed, and I would request that from the Court. I  
3 don't think anybody would have objection to that.

4 THE COURT: Do we want all those exhibits  
5 sealed? I mean, they're not filed anywhere. I  
6 don't know how you seal something in a hearing like  
7 this.

8 MS. BHALLA: I guess my only concern, Your  
9 Honor, is that some of those appear to be Social  
10 Security numbers. I just want to make sure that we  
11 do something to protect that information, however  
12 the Court --

13 THE COURT: Well, I think what Mr. Villa  
14 and Mr. Castellano and the rest of the lawyers are  
15 doing is, they're redacting the documents and then  
16 submitting to the Court redacted copies. Do you  
17 want to proceed that way?

18 MS. BHALLA: Yes, Your Honor, that sounds  
19 good. Thank you.

20 THE COURT: All right. We'll do it that  
21 way, then.

22 MR. VILLA: Since they've already been  
23 admitted, perhaps we can sit down with the  
24 Government, agree on the redactions, and then get  
25 them back to the Court, if that's okay.

1 THE COURT: Well, Ms. Bhalla didn't move  
2 the admission of any exhibits -- no? None.

3 So all we have is yours in evidence, Mr.  
4 Villa.

5 MR. VILLA: Well, then I guess we could  
6 redact them and then move them at a point when  
7 they're redacted.

8 THE COURT: Okay.

9 MR. VILLA: If that's what Ms. Bhalla  
10 wants to do.

11 MS. BHALLA: That sounds good. Thank you.

12 MR. VILLA: Your Honor, the last thing I'd  
13 like to do, we've been able to in the last few hours  
14 have the entire set of documents that were obtained  
15 from the Government in this box scanned in. They're  
16 all onto a flash drive. I don't want to admit 900  
17 paper documents.

18 I have a flash drive that I would like to  
19 identify, I guess, as Exhibit M, and move to admit.  
20 And I'm happy to give the Government a chance to  
21 review it.

22 THE COURT: All right. Are you moving  
23 that admission at this time?

24 MR. VILLA: Yes, I am.

25 THE COURT: Any objection, Mr. Castellano?

1 MR. CASTELLANO: No, Your Honor. We would  
2 just ask for a copy of the flash drive, please.

3 THE COURT: All right. So what's the  
4 exhibit number? Is it M?

5 MR. VILLA: It's Exhibit M as in Mary.

6 THE COURT: Anybody else have any  
7 objection? Not hearing any, Defendants' Exhibit M  
8 will be admitted into evidence.

9 (Defendants' Exhibit M admitted into  
10 evidence.)

11 MR. VILLA: And we will provide a copy of  
12 that flash drive to the United States.

13 And I'll pass the witness, Your Honor.

14 THE COURT: All right. Thank you, Mr.  
15 Villa.

16 Anyone else? Ms. Duncan?

17 MS. DUNCAN: Thank you.

18 DIRECT EXAMINATION

19 BY MS. DUNCAN:

20 Q. Good afternoon, Agent Sainato.

21 A. Good afternoon, ma'am.

22 Q. I just wanted to follow up a little bit  
23 about the search that you conducted in June of 2017.  
24 With respect to Mr. Rodriguez' property, I think  
25 that you testified that the bag was in a box.

1           A.     First of all, I wouldn't call it a search.  
2     It was in a clear plastic bag.

3           Q.     Did you take all the documents that were  
4     in the clear plastic bag?

5           A.     Yes.

6           Q.     Did you search or look at anyone else's  
7     property on that day?

8           A.     A couple others. Who specifically -- I'm  
9     sure that's next -- I don't know.

10          Q.     It is. Do you recall if it was property  
11     belonging to government witnesses in this case?

12          A.     Again, I don't recall at all. I think I  
13     said before it was mostly personal effects, hygiene,  
14     clothes, shoes, books, stuff of that nature.

15          Q.     And I think that you said that you did not  
16     write a report of what property or documents you  
17     looked at that day; is that right?

18          A.     That's correct.

19          Q.     Do you know if TFO Cupit did?

20          A.     I don't know.

21          Q.     Did you receive any kind of a receipt when  
22     you took Mario Rodriguez' property?

23          A.     I did not.

24          Q.     So am I correct in understanding that  
25     there is no documentation that exists of you looking

1 at that property in June 2017, or taking it back to  
2 FBI headquarters?

3 A. No, I don't believe so.

4 Q. We were looking at some letters from --  
5 where are the defense exhibits? Here we go. Thank  
6 you. I just wanted to look at these Timothy  
7 Martinez letters.

8 I'm looking at Defendants' Exhibit C, and  
9 I just wanted to note for the record the dates on  
10 these documents. So for Defendants' Exhibit C, is  
11 it correct that this letter is dated October 23,  
12 2015?

13 A. Correct.

14 Q. And that was about a month or a little bit  
15 more than a month before the first set of  
16 indictments were issued in this case; correct?

17 A. I don't recall offhand, but I'll take your  
18 word for it.

19 Q. Do you recall that the first indictments  
20 came in December of 2015?

21 A. The first ones, yes.

22 Q. In that first indictment, several of the  
23 defendants were charged with the murder of Javier  
24 Molina; correct?

25 A. I believe so.

1 Q. As was Mr. Rodriguez?

2 A. Yes.

3 Q. And then if we could look at Defendants'  
4 Exhibit D. And this is a letter from Timothy  
5 Martinez' wife to Timothy Martinez, correct? Or  
6 from Robin Martinez to Timothy Martinez?

7 A. If it was in that envelope --

8 Q. Yes.

9 A. Yes, I believe so.

10 Q. And the date on that letter, Defendants'  
11 Exhibit D, is October 22, 2015; correct?

12 A. Correct.

13 Q. The last one would be Defendants' Exhibit  
14 E. And the date on that letter is October 23, 2015;  
15 correct?

16 A. Yes.

17 Q. And do you know if the state case was  
18 still pending at the time these letters were  
19 written?

20 A. I don't know.

21 Q. I know you said you don't think there are  
22 any documents related to your looking at that  
23 property on June 2017. Do you know if there are any  
24 documents relating to just you visiting PNM on that  
25 day?

1 A. I don't know.

2 Q. Any receipts or reports or anything like  
3 that?

4 A. Again, I don't recall.

5 Q. And I think you probably testified to  
6 this, and I just missed it, but when you were  
7 searching or looking at this property, that was at  
8 PNM Level 6; correct?

9 A. I'm not sure which facility it was. It  
10 was at PNM.

11 Q. And you said that I think it was a  
12 property room?

13 A. For lack of a better word, yeah.

14 MS. DUNCAN: Could I have a moment, Your  
15 Honor?

16 THE COURT: You may.

17 MS. DUNCAN: No further questions, Your  
18 Honor.

19 THE COURT: Thank you, Ms. Duncan.

20 Ms. Jacks, do you have direct examination  
21 of Mr. Sainato?

22 MS. JACKS: I do, thank you.

23 THE COURT: Ms. Jacks.

24 DIRECT EXAMINATION

25 BY MS. JACKS:

1 Q. So, Agent Sainato, I'm going to start  
2 asking you questions about this Mario Rodriguez  
3 property. We're going to start there. Okay? First  
4 of all, let me just ask you about -- let me make  
5 sure I'm clear about the property. You don't know  
6 whether you went to PNM North or South on this day  
7 that you viewed the property in June of 2017?

8 A. No.

9 Q. But it was one of those facilities?

10 A. I was at PNM.

11 Q. Well, I mean, were you at -- but you don't  
12 know which facility at PNM you were at?

13 A. I don't recall, ma'am.

14 Q. And as you're driving down the road, when  
15 you come to the fork in the road, did you go right  
16 or did you go left?

17 A. Again, ma'am, I don't recall.

18 Q. When you went into the facility, did you  
19 have to present some sort of credentials and sign in  
20 that you were entering the facility?

21 A. Again, I don't recall.

22 Q. So you might have just badged your way in?

23 A. Again, I don't recall.

24 Q. When you went, did you go specifically for  
25 the purpose of looking at property of individuals



1 that had been there?

2 A. I don't believe so. I think I was there  
3 on an unrelated matter. But, again, I don't recall  
4 specifically.

5 Q. How did you know that you needed to go to  
6 the property room and look at something?

7 A. I believe I testified previously that we  
8 were made aware by one of the other STIU officers.

9 Q. So you might have just bumped into  
10 somebody in the hallway and they said, "Oh, hey,  
11 we've got some property you might want to look at"?

12 A. I don't recall the specifics, ma'am, but I  
13 would speculate that we were in the STIU office.

14 Q. Well, if you prepared a report about your  
15 official conduct on that day, you might have  
16 something to refresh your memory, right?

17 A. I suppose so, ma'am.

18 Q. But you don't have anything that you can  
19 refresh your memory with?

20 A. I do not.

21 Q. Do you keep a daily log of your activity  
22 as an FBI officer?

23 A. No, ma'am.

24 Q. With respect to -- you looked at property  
25 from more than one individual; is that right?

1 A. I believe so, yes.

2 Q. And did you seize property from more than  
3 one individual?

4 A. No, ma'am.

5 Q. So the only property you actually left  
6 whatever institution you were in with was this bag  
7 of property that supposedly belonged to Mario  
8 Rodriguez?

9 A. Correct.

10 Q. And with respect to the other people's  
11 property that you looked at, do you know whether it  
12 was property that belonged to Government cooperating  
13 witnesses or to defendants in the case?

14 A. I don't know, ma'am.

15 Q. Now, I guess I want to understand what is  
16 it that you think your duties to conduct a  
17 Brady-Giglio review encompass?

18 A. Could you rephrase?

19 Q. What is a Brady-Giglio review?

20 A. That's a pretty general question. I just  
21 want to answer it specifically to what you're asking  
22 me.

23 Q. Do you agree that as an FBI agent, you  
24 have a duty to preserve and document evidence that  
25 could be favorable to a criminal defendant?

1 A. Yes, ma'am.

2 Q. And what do you call that?

3 A. A Brady-Giglio review.

4 Q. Is there any difference, in your mind, in  
5 looking at property that belongs to a defendant  
6 versus looking at property that belongs to a  
7 government witness?

8 A. Potentially.

9 Q. Right. Because a defendant, you might  
10 just be looking for evidence against him, right?

11 A. That's correct.

12 Q. But if you're looking at property of a  
13 government witness, you have a special duty to look  
14 for evidence that might be actually favorable to a  
15 criminal defendant?

16 A. That's correct.

17 Q. Now, how many times, if at all, were you  
18 asked by prosecutors in this case to conduct a Brady  
19 or Giglio review of evidence that you had seized?

20 A. I don't know specifically.

21 Q. Were you ever asked?

22 A. Yes.

23 Q. When?

24 A. I don't recall.

25 Q. How many times?

1 A. I don't recall.

2 Q. Well, is it more than one?

3 A. I don't know.

4 Q. Well, do you document that anywhere?

5 A. When the prosecutors ask us to do --

6 Q. A Brady-Giglio review?

7 A. I don't believe so.

8 THE COURT: Ms. Jacks, I need to give Ms.  
9 Bean a break.

10 MS. JACKS: That's fine.

11 THE COURT: We'll take it now. We'll be  
12 in recess for about 15 minutes.

13 (The Court stood in recess.)

14 THE COURT: Mr. Sainato, I'll remind you  
15 that you're still under oath.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Ms. Jacks, if you wish to  
18 continue your direct examination of Mr. Sainato, you  
19 may do so.

20 MS. JACKS: Thank you, Your Honor.

21 BY MS. JACKS:

22 Q. Agent Sainato, when you took the property  
23 that you were told belonged to Mario Rodriguez, did  
24 you get any sort of receipt or sign any sort of  
25 receipt for the prison?

1 A. I don't recall.

2 Q. So you might have just taken the bag and  
3 thrown it in the trunk of your car and not  
4 acknowledged receipt of anything to anybody?

5 A. I suppose.

6 Q. When you took the bag sometime in June of  
7 2017, that was supposedly the property of Mario  
8 Rodriguez, did you tell anybody else?

9 A. Obviously, Task Force Officer Cupit was  
10 aware.

11 Q. He was there when you did it, right?

12 A. Correct.

13 Q. And was he actually working at the prison  
14 at that time?

15 A. No. He was a task force officer with us.

16 Q. He went to the prison with you?

17 A. Correct.

18 Q. Did he sign any sort of receipt?

19 A. I don't know.

20 Q. So you drove up from Albuquerque to PNM  
21 together?

22 A. I believe so.

23 Q. So once you got the property, you drove  
24 back to your office in Albuquerque?

25 A. That would be logical.

1 Q. Do you remember what you did?

2 A. I don't remember. This was kind of a  
3 nonevent.

4 Q. Well, it may be a nonevent to the FBI, but  
5 when you -- well, did you take the materials to your  
6 office the same day that you went to PNM or a  
7 different day?

8 A. I believe it was the same day. I don't  
9 recall specifically.

10 Q. Well, you said that at some point you  
11 looked through it, right?

12 A. Yes, ma'am.

13 Q. I don't know. You looked through it,  
14 flipped through it. You characterize it both ways,  
15 right?

16 A. I don't know, specifically. But I flipped  
17 through it, yes, ma'am.

18 Q. Where did that search take place?

19 A. I believe we looked through it at the FBI  
20 office.

21 Q. So at your cubicle at the FBI office in  
22 Albuquerque?

23 A. I believe so, yes, ma'am.

24 Q. And you say "we." Who else looked through  
25 it with you?

1 A. Officer Cupit and I.

2 Q. And what was it that you were looking for?

3 A. Like I said previously, specifically, I  
4 can't speak for Mr. Cupit, but I was looking for  
5 discovery material.

6 Q. You mean like materials that have been  
7 distributed by the Government in discovery that  
8 perhaps were in the possession of Mr. Rodriguez  
9 improperly?

10 A. Correct.

11 Q. So you were looking for like Bates stamped  
12 materials?

13 A. What the inmates would refer to as  
14 paperwork, but yes, ma'am.

15 Q. But specifically the paperwork in this  
16 case?

17 A. Or for others.

18 Q. When -- at any point after you took the  
19 property did you make some sort of notation in  
20 either a chain of custody document or a property log  
21 or a report of any type that you had seized property  
22 in connection with this investigation?

23 A. The intention wasn't to seize it, ma'am.  
24 It was just to go through it in the office rather  
25 than standing in the prison. I intended to take it

1 back to PNM. I just forgot to.

2 Q. So the answer to my question is: No, you  
3 never completed any sort of document that you had --  
4 that you were in possession or had seized materials  
5 related to this investigation?

6 A. No.

7 Q. Nothing?

8 A. Knowing what I know now, I wish I had, but  
9 no, ma'am.

10 Q. And you said that the documents -- well,  
11 did you ever, between the time that you and Task  
12 Force Officer Cupit looked through the documents and  
13 the time that you looked through them again last  
14 Sunday, had you looked at them at all?

15 A. No, ma'am.

16 Q. Nothing in between?

17 A. Correct.

18 Q. So when you found out that -- I think you  
19 said you did find out sometime after October 24,  
20 2017, that Mario Rodriguez was now a government  
21 cooperator?

22 A. Correct.

23 Q. And so at no time after you found out  
24 Mario Rodriguez was now a government witness did you  
25 ever perform a Brady-Giglio analysis of those



1 documents?

2 A. Like I said previously, I forgot that I  
3 was in possession of them, so no.

4 Q. So you never looked through them after  
5 October 24, 2017, until Sunday?

6 A. Correct.

7 Q. Did the prosecutors in this case -- after  
8 Mario Rodriguez became a government witness, did any  
9 of the prosecutors in this case ever contact you and  
10 ask you if you were in possession of any materials  
11 regarding Mr. Rodriguez, and ask you to subject them  
12 to a Brady-Giglio review?

13 A. I don't think personally. But we were  
14 asked, as agents, to do that.

15 Q. So you were asked, and you just didn't do  
16 it?

17 A. Well, again, remember, I didn't know that  
18 I had it. I'd forgotten that it was under my desk.

19 Q. And what was it that you say made you  
20 discover these documents under your desk, or under  
21 part of your cubicle last Sunday?

22 A. I didn't find it last Sunday. I  
23 discovered it on Friday.

24 Q. And what was it that made you discover it  
25 last Friday?

1           A.     Like I said previously, I had gotten back  
2     that week from a SWAT training. And that box was  
3     inside of another box that contained gear for my  
4     ballistic vest. And having that training on my  
5     mind, I looked to see what I still had in that box,  
6     gear-wise, and that's when I discovered the box that  
7     I had put Mr. Rodriguez' property into.

8           Q.     So I want to ask you some questions about  
9     some of the documents that Ms. Bhalla introduced.  
10    And I want to start with Defendants' Exhibit B. And  
11    can you read -- I just put it up on the Elmo. Can  
12    you read that?

13          A.     Yes.

14          Q.     Or do I need to enlarge it?

15          A.     No, I think I can see it.

16          Q.     And would you agree with me that that  
17    looks like notes regarding the video from the Molina  
18    homicide?

19          A.     That is what it appears, yes.

20          Q.     And it relates various activities of  
21    various people to what's going on, on the video, at  
22    particular times, right?

23          A.     I don't know specifically what it is,  
24    ma'am, but it looks like a recount of the video.

25          Q.     It looks like what?

1 A. A recount of the video.

2 Q. Okay. Are you aware that Mr. Rodriguez  
3 testified in this trial that he had not -- he'd only  
4 reviewed the video three times?

5 A. No, ma'am, I don't know what Mr. Rodriguez  
6 testified.

7 Q. Are you aware that he testified in this  
8 trial that certain things happened at particular  
9 times on the video?

10 A. Again, I don't know what he said in his  
11 testimony.

12 Q. Do you think that the fact he was in  
13 possession of a document specifying particular times  
14 and particular things that happened might be  
15 relevant to determine where his testimony  
16 originated?

17 A. I see what you're getting at. But, again,  
18 he wouldn't have had this past early summer of 2017.  
19 But I'll agree with you that, yes, it would.

20 Q. I mean, it could have -- if he'd read it  
21 and taken notes on it or memorized it, he certainly  
22 could have been quoting times based on what's in  
23 this document, wouldn't you agree?

24 A. If he memorized it, perhaps.

25 Q. Or took notes off it that you don't have?

1 A. I suppose.

2 Q. Okay. So you would agree that this  
3 document might be relevant in confronting Mr.  
4 Rodriguez about some of his testimony, if he  
5 testified about particular things happening at a  
6 particular time in the video?

7 A. Hypothetically, I'll agree with you, yes,  
8 ma'am.

9 Q. I'm going to ask you about the letters,  
10 and I think they've been marked as Defendants'  
11 Exhibits C, D, and E. I'm just going to show you  
12 the first page of Defendants' Exhibit C. And this  
13 is the envelope that the letter came in. And do you  
14 see who the letter is from?

15 A. Yes.

16 Q. And who is that?

17 A. Looks like Robin Martinez.

18 Q. And do you know that Robin Martinez is  
19 also known as Robin Lovelace, L-O-V-E-L-A-C-E?

20 A. No, ma'am.

21 Q. Were you investigating a Robin Lovelace?

22 A. Not to my knowledge.

23 Q. Did you investigate a Robin Lovelace in  
24 regards to dealing drugs or setting up drug deals  
25 for government witness Eric Duran?

1 A. I don't recall that. I don't know.

2 Q. Did you -- have you read these letters  
3 that are allegedly from Robin Martinez or Robin  
4 Lovelace to Timothy Martinez?

5 A. Not other than what was highlighted in  
6 defense's exhibits.

7 Q. Would you agree that some of the letters  
8 contain information that appear to be trying to pass  
9 information between various individuals involved in  
10 the Molina homicide?

11 A. I don't know, ma'am. I haven't read them  
12 in their entirety.

13 Q. Okay. Do you know why Mario Rodriguez was  
14 in possession of letters that were addressed to  
15 Timothy Martinez?

16 A. No.

17 Q. Do you think the fact that a government  
18 witness is in possession of materials from  
19 essentially a co-defendant in his own -- in his  
20 homicide case might be relevant to that individual's  
21 credibility?

22 A. Potentially.

23 Q. Would you agree with me that if defendants  
24 get together to get their stories straight, that  
25 that certainly is something that could affect the

1 jury's evaluation of whether they're telling the  
2 truth?

3 A. I suppose so.

4 Q. Did you ever tell any of the prosecutors  
5 here that you were in possession of letters from  
6 Robin Martinez, also known as Robin Lovelace?

7 A. I don't know that she goes by that name.  
8 But to answer your question, no, I didn't know I was  
9 in possession of them.

10 Q. I want to ask you about Defendants'  
11 Exhibits F and G. And let's start with F. These  
12 are some letters that were found, that appear to be  
13 addressed to a county clerk by Mario Rodriguez, do  
14 you agree with me?

15 A. Yes.

16 Q. And in this letter, pretrial hearing  
17 Exhibit F -- actually, it looks like G comes  
18 before -- let me show you G. Okay. This is another  
19 letter to the county clerk that appears to be from  
20 Mario Rodriguez?

21 A. If that's a question, yes.

22 Q. Okay. Let me just zoom in. Do you see  
23 this line right here where Mr. Rodriguez writes, "I  
24 need these records for legal reasons regarding a  
25 legal defense for an appeals process"?

1 A. Yes, ma'am. These are the ones that Ms.  
2 Bhalla highlighted earlier.

3 Q. Are you aware that -- do you know whether  
4 the records he was requesting actually involved a  
5 crime that he had committed or had been accused of?

6 A. I don't know.

7 Q. And if Mr. Rodriguez falsely represented  
8 that his request for records was due to a legal  
9 proceeding of his own, that that might be relevant  
10 in assessing his credibility?

11 A. I suppose so.

12 Q. I mean, if he's lying to a court clerk and  
13 a Court, saying, "I need these records for my own  
14 appeal," and they have nothing to do with him, don't  
15 you think that might show that he's engaged in some  
16 sort of other nefarious purpose by requesting these  
17 records?

18 A. On December 20, 2014, yes, ma'am, I agree  
19 with you.

20 Q. Do you know why Mr. Rodriguez might be in  
21 possession of names, addresses, Social Security  
22 numbers, other personal information for various  
23 co-defendants in his cases?

24 A. No.

25 Q. Do you know why he might be in possession

1 of telephone numbers for individuals associated with  
2 those co-defendants?

3 A. No.

4 Q. Do you think one reason he might have that  
5 information is so that he could continue to speak  
6 and have contact with his co-defendants so that he  
7 can get his story straight?

8 A. Well, that's pure speculation. It could  
9 also be that they're members of the same gang, that  
10 they're friends. It could be any reason, so I can't  
11 agree with you on that one.

12 Q. You're saying pure speculation. You're an  
13 investigator, right?

14 A. Yes, ma'am.

15 Q. You had these documents in your possession  
16 for seven months, didn't you?

17 A. Yes.

18 Q. And Mario Rodriguez is your witness, isn't  
19 he?

20 A. As the Government, yes.

21 Q. And how many attempts did you make to  
22 question Mr. Rodriguez about the contents of this  
23 property that you seized in June 2017?

24 A. Well, again, I'd forgotten that I had it,  
25 so none.



1 Q. And I'm not sure. I think I asked you who  
2 you told or who else knew about this, and you  
3 mentioned Mr. Cupit; is that right?

4 A. That's right.

5 Q. Did you ever tell Agent Acee or Agent  
6 Stemo, who were working with you on the case, that  
7 you had seized property from Mario Rodriguez?

8 A. I don't recall.

9 Q. Did you ever tell any of the prosecutors  
10 in this case who you were working with that you had  
11 seized property belonging to Mario Rodriguez?

12 A. Again, I wouldn't use the word "seized."  
13 But I don't believe they knew that I had that.

14 Q. How would you like me to ask about it?  
15 That you took property from PNM that belonged to  
16 Mario Rodriguez and left it under your desk for  
17 seven months?

18 A. "Seized," to me, implies like a legal  
19 authority needed. But we can go with "took from PNM  
20 and left under my desk."

21 Q. Well, why did you take the materials from  
22 PNM?

23 A. So that I could review it in my cubicle,  
24 rather than standing in a prison facility.

25 Q. And to determine if, in fact, you could

1 use it as evidence in this case, right?

2 A. Again, I was thumbing through it to look  
3 for legal paperwork, discovery material.

4 Q. To see if you could use that as evidence  
5 in this case; correct?

6 A. Yes.

7 Q. Now, you testified earlier that some of  
8 the materials in this bag appeared to be creative  
9 writing from Mr. Rodriguez. Do you recall that  
10 testimony?

11 A. Yes, that's what it appeared to be.

12 Q. And I think Mr. Villa showed you some  
13 examples of creative writing of Mr. Rodriguez that  
14 appear to have been typed?

15 A. I don't believe that came from the bag.

16 Q. Well, I know that's your testimony. I  
17 want to ask you a few questions about that.

18 A. Okay.

19 Q. Do you know where those came from?

20 A. Looked like it came from the discovery in  
21 this case.

22 Q. Because it's Bates stamped?

23 A. Yes.

24 Q. But do you know where it came from before  
25 the Government Bates stamped it?

1 A. No, ma'am.

2 Q. And so you're just using the fact that  
3 it's Bates stamped meaning that it's the discovery  
4 in this case?

5 A. I was going off the fact that Mr. Villa  
6 kind of alluded to that. But I guess to answer your  
7 question, yes.

8 Q. Well, is it possible that those documents  
9 came from the bag that was under your desk?

10 A. I would say that's highly improbable.

11 Q. Who else had access to that bag under your  
12 desk?

13 A. I don't believe anybody would.

14 Q. Well, it wasn't locked, right?

15 A. Correct.

16 Q. Anybody could have walked by and looked  
17 through it at any time?

18 A. I suppose.

19 Q. And you said it's not probable that those  
20 documents came from the bag under your desk, but  
21 it's possible?

22 A. I would be very surprised.

23 Q. Did you ever take an inventory of what was  
24 in the bag?

25 A. No, ma'am.

1 Q. And have you read the documents that are  
2 Mr. Rodriguez' personal items? Have you read  
3 through them at this point?

4 A. In their entirety?

5 Q. Any portion?

6 A. I've read through what I could this week.

7 Q. Pieces of it?

8 A. Correct.

9 Q. Do you agree with me that there are  
10 documents in there, that Mario Rodriguez writes he  
11 wanted to become a leader of the SNM?

12 A. I didn't see that.

13 Q. Are there documents in there that say  
14 Mario Rodriguez was trying to advance his status or  
15 improve his position within the SNM?

16 A. I don't believe so; at least, not to my  
17 knowledge.

18 Q. Are there documents in that bag in which  
19 Mario Rodriguez, in his own writing, acknowledged  
20 that he was required to register as a sex offender?

21 A. I don't know.

22 Q. Do you know that he testified at about  
23 this trial, upon the Government examination, that he  
24 didn't know he had to register as a sex offender?

25 A. Again, ma'am, I don't know what he

1 testified to.

2 Q. But do you know whether there are  
3 documents in that bag in which Mario Rodriguez, in  
4 his own writing, admits that he raped an inmate in  
5 the county jail, the Grant County jail?

6 A. I didn't read that, but if you know where  
7 they're at, you could put it up on the exhibit  
8 monitor.

9 Q. So you don't know whether there's  
10 documents in there where he admits that he raped a  
11 guy in the Grant County jail?

12 A. No, ma'am.

13 Q. Do you know whether he was asked about  
14 that at this trial?

15 A. No.

16 Q. Do you know whether he denied personally  
17 raping the individual at Grant County jail?

18 A. Ma'am, I'll consistently tell you: I  
19 don't know what he testified to.

20 Q. I want to mark another exhibit. What's  
21 our next in order? N? So showing you what's been  
22 marked as Defendants' Exhibit N, is this one of the  
23 documents you read?

24 A. I don't know.

25 Q. Do you know that Mario Rodriguez committed

1 sort of a high-profile assault on a correctional  
2 officer?

3 A. No, I don't.

4 Q. That was on TV?

5 A. I did not.

6 Q. In this letter -- I guess you have to read  
7 it. Do you want me to come up there with it so you  
8 can read it, or can you read it off the Elmo?

9 A. Do you want me to read the whole page or  
10 just a specific section?

11 Q. Why don't you start with where you can  
12 see, "He asked me my name." Just read it to  
13 yourself through the highlighted portion.

14 A. Where are we? Oh, at the top. Okay.  
15 Okay.

16 Q. So you would agree that this writing  
17 purports to be a rehash of a conversation between  
18 Mario Rodriguez and another prison inmate, right?

19 A. I don't know what it is, ma'am. The stuff  
20 that I saw was pretty creative in nature. But,  
21 yeah, I guess this looks like a story about a  
22 conversation.

23 Q. And about a conversation about assaulting  
24 some member of law enforcement, right?

25 A. Yes.

1 Q. And he brags, doesn't he, that he told  
2 every detail of this assault on a law enforcement  
3 officer with adrenalized pride?

4 A. Is that what that says?

5 Q. Looks like he had a problem with the  
6 spelling.

7 A. I don't know if I'd use the word "brags,"  
8 but he wrote that. Or it looks like he wrote that.

9 Q. What do you think "adrenalized pride"  
10 means?

11 A. I have no idea.

12 Q. I have another exhibit. Can that be O.  
13 Thank you. Now, do you know whether Mario Rodriguez  
14 was asked questions during this trial about his  
15 ability to manipulate the prison system in the State  
16 of New Mexico?

17 A. Consistently, ma'am, I don't know what he  
18 testified.

19 Q. Would you agree with me that to the extent  
20 that someone has the ability to manipulate the  
21 prison system within the State of New Mexico, that  
22 might be a relevant fact in assessing their  
23 credibility?

24 A. Could you rephrase? That was long.

25 Q. Do you think if somebody had the ability

1 to manipulate correctional officers in the  
2 correctional establishment, that might be relevant  
3 to an assessment of their credibility?

4 A. I suppose.

5 Q. Well, this is a case where the crimes  
6 occurred in prison, right?

7 A. Correct.

8 Q. And the witnesses were all in prison,  
9 right?

10 A. I don't know if I'd say -- I don't know if  
11 all of them were. But I'll agree with you that  
12 there were witnesses in prison.

13 Q. Many.

14 So showing you what's been marked  
15 Defendants' Exhibit O, and I just highlighted a  
16 portion of this, but does Mr. Rodriguez write about  
17 his ability to manipulate the system by, quote,  
18 "hatching a plan to make his cell mate PC?"

19 A. I agree with you that that's what that  
20 says.

21 Q. And make my cell mate PC means make my  
22 cell mate do what?

23 A. I would speculate that that means going  
24 into protective custody.

25 Q. To request to go into protective custody?



1 A. Right.

2 Q. And Mario Rodriguez writes here that he  
3 did that so he could get his homie as a bunky?

4 A. Yes.

5 Q. What's a bunky?

6 A. I would speculate that that's a cell mate.

7 Q. I have another writing. I'd like to mark  
8 it as Defendants' Exhibit P.

9 Agent Sainato, I'm going to ask you to  
10 read, I think, the first full paragraph on this  
11 exhibit as it's up there on the Elmo. It starts  
12 with, "I got a soda pop" -- and read through that  
13 paragraph and the next paragraph.

14 A. Okay.

15 Q. And would you agree that this writing  
16 concerns an assault that Mario Rodriguez claims to  
17 have done on a correctional officer?

18 A. Yes.

19 Q. What did he use as a weapon?

20 A. According to this, a can of soda in a  
21 sock.

22 Q. In a sock. And he hit the correctional  
23 officer in the face, right?

24 A. In the head, I think is what it said. But  
25 yes.

1 Q. In this writing, he refers to -- he said,  
2 "I should have used the lock in the sock and drank  
3 the pop. But then again, with the damage I did with  
4 the pop, maybe I'm lucky I didn't. The soda pop  
5 exploded at first contact, detaching Officer  
6 Griego's retina, and destroying his vision forever."

7 Would you agree with me that's what he  
8 wrote?

9 A. Yes.

10 Q. Does that seem to be bragging about his  
11 assault on a correctional officer?

12 A. Certainly recounting it.

13 Q. And recounting it in a way that he's  
14 saying that that was a good use of the soda pop?

15 A. That's speculative, but yes.

16 Q. Well, he writes, "I should have used the  
17 lock in the sock and drank the pop. Then again,  
18 with the damage I did with the pop, maybe I'm lucky  
19 I didn't"?

20 A. Is there a question?

21 Q. Well, doesn't that sound to you like  
22 bragging? Maybe I'm lucky I didn't because look at  
23 what I accomplished? Isn't that what he's saying?

24 A. I'll agree with you.

25 Q. And I want to show you one more writing

1 from Mr. Rodriguez. We'll mark this Defendants'  
2 Exhibit Q. Again, I'm going to ask you to look at  
3 the highlighted portion. Why don't you read for us  
4 what Mr. Rodriguez wrote in this writing, if you  
5 can.

6 A. "I am in constant need for conflict  
7 and" -- I can't make that one out.

8 Q. "Enemies."

9 A. "Enemies. Otherwise, I wage war upon  
10 myself."

11 Q. And do you know that part of the defense  
12 in this trial is that Mr. Rodriguez, in fact,  
13 initiated the murder of Javier Molina?

14 A. No, I don't know that.

15 Q. And do you think a person who is in  
16 constant need for conflict and enemies might be  
17 someone who is -- that that information might be  
18 important for somebody assessing whether Mr.  
19 Rodriguez initiated the attack on Mr. Molina?

20 A. Ma'am, are you representing all of these  
21 as if they came from a journal? Some of these came  
22 from songs, creative stories. I don't know the  
23 context of this specific statement.

24 Q. But you had these documents for seven  
25 months, right?

1 A. Under my desk, but yes, ma'am.

2 Q. So you could have read them, right?

3 A. Had I known that I had them. And in  
4 hindsight, I wish I had read them.

5 Q. And you could have gone and talked to  
6 Mario Rodriguez, your witness, and asked him about  
7 these writings, right?

8 A. Again, had I known that I was in  
9 possession of them. And as I started to say, in  
10 hindsight, I wish that I had recalled and had gone  
11 through them more thoroughly when I first took  
12 custody of them.

13 Q. So you want us to believe that when you  
14 found out that Mr. Rodriguez was a government  
15 witness, sometime after October 24, 2017, you didn't  
16 remember you had a sack of his property under your  
17 desk?

18 A. You can believe whatever you want, ma'am.  
19 I'm telling you the truth.

20 MS. JACKS: Your Honor, I have some  
21 questions regarding the interview with Mr. Urquizo.  
22 But at this point I'd like to break with this  
23 witness and call Mr. Beck to the stand. I think  
24 they've had time to confer with counsel.

25 THE COURT: What's the Government's

1 position on those two requests?

2 MS. ARMIJO: Your Honor, the United States  
3 is still -- the Touhy requests have to go up the  
4 chain, and it's still being considered, but we do  
5 need time. In reference to Ms. Jacks' motion, we  
6 are requesting time to respond to it. Because she  
7 doesn't cite any Tenth Circuit law. The outrageous  
8 Government conduct we feel does not apply to this  
9 case. And I can cite to her motion -- I can cite a  
10 case for the Court.

11 In addition to that, we don't believe that  
12 Matt Beck -- the Touhy letter, by the way, was for  
13 Castellano and Beck, as well. But there is no  
14 reason why Mr. Castellano should even be involved in  
15 it.

16 Additionally, we believe that the  
17 witnesses should be the agents. But if you're  
18 asking specifically if we're ready to respond to the  
19 Touhy request, we are not.

20 THE COURT: All right. Well, I don't  
21 think I can compel them at the present time to be  
22 witnesses. I still think that one way to maybe  
23 resolve this is just to allow them to proceed as  
24 attorneys and discuss any questions. They've always  
25 answered fully any questions about their production.

1 And it seems to me that would be a better way to go  
2 than trying to get them under oath. But if you want  
3 to pursue that route, then I think we need to  
4 continue to ask these witnesses questions, so we can  
5 figure out how to get back to the trial.

6 MS. JACKS: If I can just have a moment?

7 THE COURT: You may.

8 MS. JACKS: Your Honor, I'm informed by  
9 Ms. Duncan that she has some limited recross or --  
10 yeah, redirect, based on the questions that I asked  
11 regarding Ms. Lovelace.

12 THE COURT: Well, y'all are still on  
13 direct. So do you want --

14 MS. JACKS: Maybe I'll defer to her on  
15 that topic, and then we'll proceed with the next  
16 subject area with this witness.

17 THE COURT: Okay. All right. Ms. Duncan,  
18 I consider y'all still on direct, so if you have  
19 questions, go ahead.

20 MS. DUNCAN: I'll be very brief, Your  
21 Honor.

22 THE COURT: Ms. Duncan.

23 MS. DUNCAN: Thank you, Your Honor.

1 REDIRECT EXAMINATION

2 BY MS. DUNCAN:

3 Q. Agent Sainato, I just wanted to follow up  
4 on the questions Ms. Jacks asked you about Robin  
5 Martinez, a/k/a Robin Lovelace. You indicated that  
6 you weren't aware there was an FBI investigation of  
7 Robin Lovelace in connection with the SNM?

8 A. Doesn't sound familiar. It's definitely  
9 not something I handled.

10 Q. Okay.

11 MS. DUNCAN: If I could approach. For the  
12 record, I'm showing the Government what's been Bates  
13 numbered as 41172.

14 THE COURT: Why don't you see who's behind  
15 that door.

16 THE CLERK: It's from the clerk's office,  
17 but the jury is all here.

18 MS. DUNCAN: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MS. DUNCAN:

21 Q. I'm showing you what's Bates numbered  
22 DeLeon 31516.

23 A. Okay.

24 Q. Do you recognize that document, Agent?

25 A. My name is on it, but I don't recall

1 writing that.

2 Q. Do you recall working with Eric Duran to  
3 make recordings of defendants in this case and also  
4 drug buys on the street?

5 A. Recordings, yes. I recall only one drug  
6 buy.

7 Q. Were you involved in that, arranging for  
8 Mr. Duran to be able to call people on the street  
9 and then introducing undercover agents to those  
10 people?

11 A. I was involved in the operations, not in  
12 the logistics of setting that up.

13 Q. Do you have any doubt that you wrote this  
14 report, Agent Sainato?

15 A. No, ma'am.

16 MS. DUNCAN: Your Honor, for the record, I  
17 would like to mark this as an exhibit to the  
18 hearing. I don't know what we are. Exhibit R.

19 Q. Agent Sainato, this report documents  
20 contact between Eric Duran and a Robin Lovelace,  
21 correct?

22 A. I think it did, yes.

23 Q. And it was -- the contact was about buying  
24 drugs from Ms. Lovelace; correct?

25 A. I no longer have it in front of me.



1 Q. Oh, I can give it back to you.

2 A. Wow. I really don't remember this, but  
3 yes, that's what it says.

4 Q. And according to your report, Mr. Duran  
5 introduced an undercover employee to Ms. Lovelace  
6 via telephone; correct?

7 A. That's what my report says, yes.

8 Q. And you had identified that Ms. Lovelace  
9 was not a member of the SNM Gang; however, she was  
10 believed to sell drugs to gang members, correct?

11 A. Again, yes.

12 Q. And ultimately, the Government did not  
13 pursue this undercover drug deal with Ms. Lovelace;  
14 correct?

15 A. I don't believe so.

16 Q. And are you aware that Mr. Duran alleged  
17 that he learned of Ms. Lovelace's ability to sell  
18 him drugs through Timothy Martinez?

19 A. I'm sorry. Can you say that one more  
20 time?

21 Q. Sure. Were you aware that Mr. Duran  
22 learned of Ms. Lovelace's ability to supply him with  
23 drugs from Timothy Martinez?

24 A. No, ma'am.

25 Q. If I could get that back. Did you

1 participate in any of the interviews with Mr. Duran  
2 in 2015?

3 A. I don't recall off the top of my head.

4 Q. Do you recall ever participating in an  
5 interview in which Katherine Brusuelas was also  
6 present?

7 A. What date was that?

8 Q. That would be May 20, 2015.

9 A. I didn't get to Albuquerque until July of  
10 2015, so that was prior to my graduating the FBI  
11 Academy.

12 Q. Fair enough.

13 MS. DUNCAN: Your Honor, at this time I  
14 move the admission of Defendants' Exhibit R.

15 THE COURT: Any objection, Mr. Castellano?

16 MR. CASTELLANO: I'm sorry. May I see the  
17 document?

18 THE COURT: It's R.

19 MR. CASTELLANO: No objection, Your Honor.

20 THE COURT: Anybody else have any  
21 objection?

22 MS. JACKS: No.

23 THE COURT: Not seeing or hearing any,  
24 Defendants' Exhibit R, hearing Exhibit R, will be  
25 admitted into evidence.

1 (Defendants' Exhibit R admitted into  
2 evidence.)

3 MS. DUNCAN: Your Honor, I have no further  
4 questions.

5 THE COURT: Thank you, Ms. Duncan.

6 Ms. Jacks, do you wish to continue your  
7 examination?

8 MS. JACKS: I do, Your Honor.

9 THE COURT: Ms. Jacks. Before I move on,  
10 I'll go ahead and move in the exhibits that I marked  
11 and questioned the witness about, which is I think M  
12 through Q.

13 Any objection to those, Mr. Castellano?

14 MR. CASTELLANO: No, Your Honor.

15 THE COURT: Any objection from anybody  
16 else? Not seeing or hearing any, Defendants'  
17 Exhibits for the hearing M, N, O, P, and Q are  
18 admitted into evidence.

19 (Defendants' Exhibits M, N, O, P, and Q  
20 admitted into evidence.)

21 MS. JACKS: At this point, I have two  
22 exhibits that I'd like to mark. One is an FBI 302,  
23 January 22, 2018. And the other is an attachment to  
24 an email that was sent to me last night, that was  
25 identified as Agent Stemo's notes from that meeting.

1 It's a four-page document, Bates stamped 54285  
2 through 54288. What are our next two? So the 302  
3 will be S, and the notes will be T.

4 THE COURT: Any objection to those,  
5 Mr. Castellano?

6 MR. CASTELLANO: Your Honor, I was  
7 speaking to Ms. Bhalla. She had some questions for  
8 me. Can I see the documents real quick?

9 MS. JACKS: Sure.

10 MR. CASTELLANO: I didn't hear what was  
11 said.

12 MS. JACKS: And may I approach the  
13 witness, Your Honor?

14 THE COURT: Yeah. Did you have a position  
15 on those, Mr. Castellano?

16 MR. CASTELLANO: No objection, Your Honor.

17 THE COURT: All right. Anybody else have  
18 any objection? Not hearing any, Defendants'  
19 Exhibits S and T will be admitted into evidence.

20 (Defendants' Exhibits S and T admitted  
21 into evidence.)

22 MS. JACKS: Thank you. I'm just going to  
23 give them to the witness so that he can refer to  
24 them if he needs to while he's testifying.

25 THE WITNESS: Thank you, ma'am.

1 THE COURT: Let's talk a second about the  
2 jury. The jury has all returned. I guess I'm  
3 increasingly concerned about the delay in this  
4 trial. What is the proposal about kind of what  
5 we're doing and where we're going, Ms. Jacks?

6 MS. JACKS: Well, Your Honor, I thought  
7 what we were doing is having an evidentiary hearing  
8 regarding the two issues about the Government's  
9 failure to disclose; the first being the  
10 900-whatever pages that were allegedly --

11 THE COURT: Well, here's somewhat my  
12 problem, is I thought that what we were going to do  
13 is y'all were going to use this opportunity to do  
14 some discovery, so that y'all could prepare to then  
15 decide what to do with these exhibits in the trial.  
16 I don't have a feel that's what's going on here. So  
17 we've kind of gone two hours with what I think was  
18 what everybody considered the minor witness on this,  
19 and I feel like something else is going on here, not  
20 discovery.

21 MS. JACKS: I don't know that I can answer  
22 for everyone. I thought this was a motion to  
23 determine the extent -- the reason, the extent, and  
24 nature of the Brady violation that we've alleged  
25 with respect to Mr. Sanchez.

1 THE COURT: The questioning has not been  
2 extremely helpful to the Court on that aspect.

3 MS. JACKS: What I'd like to do is proceed  
4 with this witness.

5 THE COURT: How long do you expect to take  
6 with this witness?

7 MS. JACKS: Twenty minutes, depending on  
8 his memory.

9 THE COURT: Then what are we going to do?

10 MS. JACKS: Call Agent Stemo.

11 THE COURT: And how long is that going to  
12 take?

13 MS. JACKS: I would estimate approximately  
14 the same.

15 THE COURT: Twenty minutes?

16 MS. JACKS: On this issue, yes.

17 THE COURT: Does everybody think we can  
18 have the jury back in here in 45 minutes?

19 MS. DUNCAN: Your Honor, I know that we  
20 don't plan to question Agent Sainato about the  
21 report Ms. Jacks is going to question him about. We  
22 would have some questions for Agent Stemo. I'm  
23 guessing maybe ten minutes. We're not going to  
24 repeat anything that Ms. Jacks does, obviously.

25 THE COURT: Is that in addition to her

1 estimate of 45 minutes?

2 MS. DUNCAN: So ten minutes in addition to  
3 her estimate.

4 THE COURT: What's your thoughts, Mr.  
5 Castellano?

6 MR. CASTELLANO: Cross-examination is  
7 going to add time, as well. I'd say at least 20  
8 minutes.

9 THE COURT: Well, if I bring the jury back  
10 in at 8:30 in the morning, can I have a commitment  
11 from everybody that we're going to be done with this  
12 hearing?

13 MS. JACKS: At least with the witnesses  
14 that are presently here. I'm still requesting to  
15 call Mr. Beck. And according to the documents, Mr.  
16 Castellano was present as well. So depending on  
17 what develops this afternoon, I may still be seeking  
18 to call him at some point tomorrow.

19 THE COURT: What do you think the chances  
20 are you're going to be allowed by DOJ to testify in  
21 this case, Mr. Castellano? Mr. Beck? Ms. Armijo?

22 MR. CASTELLANO: May we have a moment,  
23 Your Honor?

24 THE COURT: You may.

25 MS. ARMIJO: Your Honor, I think that the

1 issue is whether or not the testimony is necessary,  
2 and that's the analysis that our office is currently  
3 going through, running up the chain. Our position  
4 is that for a Brady-Giglio violation, either AUSA's  
5 testimony is not necessary. And it certainly  
6 doesn't apply for outrageous Government conduct.  
7 And that's what we would put in a written response.  
8 But we certainly feel that their testimony is not  
9 necessary, and that's something that -- why it's  
10 taking time, and they're going through the analysis  
11 right now.

12 THE COURT: Do you think it's likely in  
13 the morning, since I'm unfamiliar with this kind of  
14 scenario, do you think it's unlikely that Mr. Beck  
15 and Mr. Castellano are going to be released by DOJ  
16 to testify in this hearing?

17 MS. ARMIJO: I would assume so, based on  
18 the case law as we see it and our response to it.

19 THE COURT: So you think if I bring the  
20 jury back at 8:30 in the morning, it's very likely  
21 the hearing will be concluded and we can begin with  
22 the case?

23 MS. ARMIJO: Yes. I don't think that  
24 there will be testimony from either AUSA.

25 THE COURT: Well, unless the defendants



1 have strong feelings about this, what I propose is  
2 let the jury go, let you have the afternoon to  
3 continue to examine the witnesses, and taking the  
4 Government's representation, which I don't have any  
5 reason to doubt, we'll begin at 8:30 in the morning  
6 with taking of testimony.

7 Is it all right if Ms. Standridge just  
8 goes back and releases them for the evening?  
9 Anybody have an objection to that? And we can  
10 continue with our work?

11 MS. JACKS: I have no objection.

12 THE COURT: All right. Is that all right,  
13 Ms. Armijo?

14 MS. ARMIJO: Yes, Your Honor, that's fine.

15 THE COURT: Not hearing any other  
16 objection, I'm going to have Ms. Standridge just  
17 tell them to be back at 8:30 in the morning.

18 MR. CASTELLANO: Your Honor?

19 THE COURT: Yes.

20 MR. CASTELLANO: So we can plan for  
21 tomorrow, is the defense requesting witnesses in  
22 custody tomorrow being produced so they can continue  
23 examination of them; for example, Mario Rodriguez,  
24 so we can get the word out?

25 THE COURT: Do you want to get any

1 witnesses here? Any of the defendants want any of  
2 those witnesses here tomorrow?

3 MS. JACKS: Your Honor, as I said in my  
4 filing, we've made certain tactical decisions with  
5 respect to the cross-examination of the Government's  
6 witnesses and with respect to the defenses that  
7 we're pursuing. And I think to, after six weeks of  
8 trial, ask us to, you know, reassess that and start  
9 calling witnesses back, it's not going to -- I don't  
10 see how that could happen.

11 So the only person I'd be requesting for  
12 tomorrow is Agent Stemo, I think, at this point.

13 THE COURT: Well, let me put it this way,  
14 and I'll see if the Government would agree with  
15 this: If you think that there is any chance that  
16 you're going to call in your case any additional  
17 witnesses, what I would propose to do is you just  
18 tell me. You don't have to tell me you're going to  
19 call them. You just have to say you want them here  
20 in case you work this afternoon, work tonight, work  
21 even tomorrow, and decide that you want to call  
22 them.

23 And I think the Government would be  
24 willing to just have them here. And if you decide  
25 you don't want to call them in your trial, then you

1 don't have to. But if you want them here, they'll  
2 be here. I don't think anybody will hold anybody --  
3 hold it against anybody if you decide tomorrow you  
4 don't want them.

5 Is there anybody that wants anybody?

6 MS. DUNCAN: Your Honor, could we just  
7 have a few minutes for the defense to confer?

8 THE COURT: Oh, certainly. Sure, y'all  
9 talk.

10 MS. FOX-YOUNG: Your Honor, while we're  
11 conferring, I'd just ask for a representation from  
12 the Government that all of the agent notes have been  
13 produced? We received more of Agent Acee's notes  
14 this morning at 9:18 a.m. by email. And it's been  
15 kind of a drip, drip, drip of notes. So I don't  
16 know if there are going to be more produced, or if  
17 this is all of them.

18 THE COURT: Anybody want to respond to  
19 that?

20 MR. BECK: Yes. What was requested by Mr.  
21 Lowry's motion, which the Court was inclined to  
22 grant, either for production to the Court or  
23 production to you, we have produced all the notes to  
24 the defense responsive to that request.

25 THE COURT: To that motion?

1 MR. BECK: Yes.

2 MR. VILLA: Your Honor, a point of  
3 clarification. If we ask that anyone be brought,  
4 that does not undo in any way the agreement we have  
5 with respect to the Government being done with their  
6 rebuttal witnesses?

7 THE COURT: No, I think that still holds.

8 MR. VILLA: Okay.

9 THE COURT: I'm getting an affirmative  
10 nod.

11 MS. ARMIJO: Yes, Your Honor.

12 THE COURT: I think at the present time we  
13 should assume that the Government has rested both in  
14 its case-in-chief and its rebuttal.

15 MR. VILLA: Thank you, Judge.

16 THE COURT: Let me go back to you,  
17 Ms. Fox-Young. Mr. Beck's representation, is that  
18 sufficient to answer your question?

19 MS. FOX-YOUNG: With respect to Mario  
20 Rodriguez, Lupe Urquizo, and Tim Martinez, then it's  
21 my understanding that the Government is representing  
22 that all the agent notes have been turned over. I'd  
23 ask that all the agent notes be turned over for all  
24 of the cooperating witnesses in this case. And I'm  
25 not sure whether or not that's happened. I'd like

1 representation from the Government as to whether it  
2 has.

3 MS. ARMIJO: Your Honor, I think that the  
4 notes that have been disclosed are specific to Mr.  
5 Lowry's motion that we had initially said -- or the  
6 Court had said to give to the Court to review. In  
7 lieu of giving it to the Court, we just went ahead  
8 and supplied it to the defense. We have not gone  
9 after that. We did ask agents to review notes. And  
10 so that is what has been produced.

11 THE COURT: Well, I guess at this point,  
12 particularly given my review of Agent Stemo's, where  
13 you have, if I understand what I have, about  
14 two-and-a-half pages of notes and three paragraphs  
15 of a 302. And I may not be understanding what I  
16 have. So if that's the case, it concerns me that  
17 we're looking at agent notes that are extensively  
18 longer than the 302s. And so it seems to me that  
19 those are going to fall within Jencks statements.

20 And so I guess for the present time, I  
21 would -- the witnesses that you have called, I think  
22 you need to either produce, or if you disagree with  
23 where I have drawn the line, and want me to review  
24 it, produce the notes of the agents. Because I  
25 would consider those to be Jencks statements. And I

1 think that what had been produced today, if I  
2 understand what I have, seems to confirm the reason  
3 that I have required agent notes in the past.

4 So I know it wasn't within the scope of  
5 what Mr. Lowry requested, but let's see if there is  
6 anything further that needs to be produced. I'll so  
7 order that.

8 MS. ARMIJO: All right, Your Honor. And  
9 just so we're clear, it's as to the cooperating  
10 witnesses that have testified. And we will make  
11 that inquiry.

12 THE COURT: It would be the agents' notes  
13 of their interviews or meetings with your witnesses  
14 that haven't been produced to date.

15 MS. ARMIJO: Okay. Thank you, Your Honor.  
16 We'll get on that.

17 MR. LOWRY: Your Honor, can I have a point  
18 of order on this, that I don't disagree with  
19 Mr. Beck. I went through with the production, and  
20 as far as can I tell, all the FBI agent notes  
21 relevant to those interviews have been produced.  
22 But I'd also ask that the task force officers that  
23 were associated with those interviews have their  
24 notes be produced.

25 And I know that the Court, early on, made

1 a finding that the Department of Corrections was  
2 within the realm of the prosecution agency of the  
3 Department of Justice for the purposes of this  
4 trial. And I don't know that Adam Vigil or  
5 Christopher Cupit took notes. But I'd like the  
6 Government, at least to make due diligence to  
7 inquire and see if they did.

8 THE COURT: Cupit and who?

9 MR. LOWRY: It was Captain Cupit.

10 MR. BECK: We included -- I mean, as a  
11 task force officer, we include them as FBI, so we  
12 did make inquiry as to his personal notes.

13 THE COURT: So given Mr. Lowry's  
14 representation, it doesn't sound like you expect to  
15 produce any more documents; am I correct?

16 MR. BECK: I don't think so. I don't know  
17 about Adam Vigil. He was a task force officer, but  
18 I don't think he attended any of those.

19 MR. LOWRY: Well, Adam Vigil was at the  
20 initial interview with Lupe Urquizo on February 24,  
21 2017.

22 MR. BECK: We'll make inquiry.

23 THE COURT: Okay. Does that --

24 MR. LOWRY: Yes.

25 THE COURT: -- given what you know, and

1 what you have, we're in good shape now?

2 MR. LOWRY: Yes, Your Honor.

3 THE COURT: And are you satisfied, Ms.  
4 Fox-Young, as well?

5 MS. FOX-YOUNG: Yes, Your Honor. Thank  
6 you.

7 THE COURT: Did y'all reach a decision as  
8 to whether you want the Government to have anybody  
9 here tomorrow, just in case you want to call them,  
10 Ms. Jacks?

11 MS. JACKS: Your Honor, we have not  
12 reached a consensus. I think maybe some of the  
13 testimony this afternoon may help us do that.

14 THE COURT: Okay. Can y'all wait a little  
15 bit and see?

16 MS. ARMIJO: Yes. I know that Corrections  
17 usually requires that we tell them by 4:00, so we  
18 would probably need to know sooner rather than  
19 later, because they have to come up with operation  
20 plans. And we also have to notify the marshals.  
21 I'm not as concerned with the Marshal's office, but  
22 Corrections does need to come up with an operations  
23 plan to bring people, especially because they're not  
24 expecting to.

25 THE COURT: Well, let me ask the



1 Government this: What do you think about just  
2 bringing those people that you think may end up  
3 being witnesses here? And if the defendants need  
4 them, they can use them; and if they don't, they can  
5 take them back tomorrow. What would you think about  
6 that, since we're at 4:15?

7 MS. ARMIJO: We could go ahead and try to  
8 figure out who it is that they may. But if at the  
9 end of the day they could please let us know, then  
10 we can cancel it or --

11 THE COURT: Okay. Could we do that, Ms.  
12 Jacks? They'll go ahead and make arrangements to  
13 get the people here, but if you decide that you  
14 definitely know you don't want them, you'll tell  
15 them, so they can cancel them?

16 MS. JACKS: I think that sounds workable.

17 THE COURT: Okay. Does that work, Ms.  
18 Bhalla?

19 MS. BHALLA: Yes, Your Honor.

20 THE COURT: All right. So we'll go that  
21 way.

22 All right. Let's see. We have Mr.  
23 Sainato on the stand. I think you wanted to  
24 continue the questioning, Ms. Jacks?

25 MS. JACKS: I do, Your Honor. And I want

1 to move to the interview of Lupe Urquizo on January  
2 22nd.

3 REDIRECT EXAMINATION

4 BY MS. JACKS:

5 Q. So Agent Sainato, you have Exhibits S and  
6 T up there, right?

7 A. Yes, ma'am.

8 Q. So let me ask you a few just preliminary  
9 questions. Did you participate in an interview of  
10 government witness, Lupe Urquizo, on January 22,  
11 2018?

12 A. I did.

13 Q. And who else was present during that  
14 interview?

15 A. It was Mr. Beck, Mr. Urquizo's attorney  
16 whose name is Camunez -- I can't remember  
17 specifically her last name. And then I believe Mr.  
18 Castellano was in and out during that interview.

19 Q. And what about FBI Agent Nancy Stemo?

20 A. She was not present.

21 Q. Can I ask you to take -- there is a 302  
22 prepared regarding that particular meeting; correct?

23 A. Looks like Exhibit S is that 302.

24 Q. Is that the 302 that was prepared in  
25 connection with that interview of Mr. Urquizo?

1 A. I believe so, yes.

2 Q. Well, is there something I can do to help  
3 you be more certain?

4 A. Give me a second to read it.

5 Q. Please.

6 A. Yes, ma'am, that is it.

7 Q. Who authored that 302?

8 A. Agent Stemo did.

9 Q. So that would mean that she was present  
10 during the meeting, right?

11 A. No, she was not. She wrote the report.

12 Q. So Agent Stemo wrote a 302 regarding an  
13 interview with Mr. Urquizo that she did not  
14 participate in?

15 A. Off of my notes, yes, ma'am.

16 Q. So you took notes during the interview?

17 A. Yes, ma'am.

18 Q. So should it be your name at the bottom?  
19 Should your name be included on the 302?

20 A. This is the first I'm seeing it. And it  
21 looks like she just listed FBI personnel. So my  
22 name is not on there.

23 Q. And your name is not on the line for the  
24 person who authored it, is it?

25 A. No, ma'am.

1 Q. How did you take notes during the meeting  
2 with Mr. Urquizo on January 22, 2018?

3 A. On my laptop. I type them.

4 Q. And looking at what's been marked as  
5 Defendants' Exhibit T, the four-page document, does  
6 that appear to be the notes that you're now saying  
7 you took on January 22, 2018?

8 A. Yes.

9 Q. And do you know that those were provided  
10 to us last night with the representation that they  
11 were taken by Agent Stemo?

12 A. No, I did not.

13 Q. So how long is the 302 that Agent Stemo  
14 prepared in regards to that meeting with Mr.  
15 Urquizo?

16 A. It's approximately a page.

17 Q. Not even a whole page, right?

18 A. Correct, four paragraphs.

19 Q. Four paragraphs, about two-thirds of the  
20 page?

21 A. Yes.

22 Q. And your notes are four pages of  
23 single-spaced typing?

24 A. Yes, ma'am.

25 Q. Now, I want to discuss some questions

1 about the interview with Mr. Urquizo on January 22,  
2 2018. During that interview, did Mr. Urquizo talk  
3 about the Molina homicide?

4 A. He did.

5 Q. And during that interview, did he talk  
6 about what happened once he got to Southern New  
7 Mexico Correctional Facility?

8 A. May I refer to my notes?

9 Q. Sure. Do you want to take a minute to  
10 look through your four pages of notes before I ask  
11 you these questions?

12 A. If you could zero me in on what spot  
13 you're talking about, it would expedite it, or I  
14 could read them in their entirety.

15 Q. Agent Sainato, you knew you were going to  
16 be called to testify about this interview?

17 A. No, ma'am. I was under the impression I  
18 being called to testify about the Rodriguez  
19 property.

20 Q. Let me give you a minute. Or why don't  
21 you take some time to review the notes and the 302,  
22 and let me know when you're ready to answer  
23 questions.

24 A. Okay.

25 Q. Thank you.

1 A. Thank you.

2 Q. So I'm going to ask you some questions  
3 about what Mr. Urquizo told you regarding the things  
4 that happened at Southern New Mexico Correctional  
5 Facility after he got there on March 6.

6 A. Okay.

7 Q. And if you need to refer to your notes,  
8 just let me know.

9 A. Okay.

10 Q. So first of all, during that interview did  
11 Mr. Urquizo tell you that when he got down to  
12 Southern New Mexico Correctional Facility there was  
13 no property officer on duty?

14 A. I just read that in my notes, yes, ma'am.

15 Q. Well, do you have a recollection of it,  
16 other than having just read it in your notes?

17 A. So this was a pretrial interview, and it  
18 was being led by Mr. Beck. And I was taking notes  
19 as quickly as I could. So my recollection of what  
20 was actually said is going to be spotty. But I took  
21 pretty detailed notes. So I would represent that  
22 whatever is on the notes is what was discussed.

23 Q. Okay. You'll agree with me that the notes  
24 are substantially longer than the 302?

25 A. Yes.

1 Q. And you were basically taking  
2 contemporaneous notes on your laptop as Mr. Beck was  
3 conducting the interview?

4 A. Yes.

5 Q. And were you writing things down in your  
6 notes that were not said?

7 A. No, ma'am.

8 Q. You were writing things as they were said?

9 A. Correct.

10 Q. So when you testify today, you're  
11 testifying just from your notes? Or you're  
12 testifying from your notes and your memory of the  
13 interview?

14 A. Mostly the notes, ma'am. If there is  
15 something I remember specifically from that  
16 conversation, I'll let you know.

17 MS. JACKS: Your Honor, again, I'm going  
18 to renew my -- the other two witnesses to this  
19 conversation are the prosecutors, Mr. Beck and Mr.  
20 Castellano. And I'm again going to move for their  
21 exclusion. If this agent is only testifying about  
22 what's in his notes, then those are really the only  
23 two witnesses that can testify about what was  
24 actually said. And for them to -- I just think it's  
25 improper for them to be getting a preview of what

1 the testimony is, and hear the testimony of each  
2 other.

3 THE COURT: Well, I'm going to deny the  
4 request. I think they're attorneys, and I'm going  
5 to have to accept their representations and  
6 truthfulness to try to determine these issues.

7 MS. JACKS: And you certainly understand  
8 Mr. Sanchez' position, that while they're attorneys,  
9 they're attorneys that held on to notes that  
10 certainly appear to be on their face exculpatory for  
11 over a month, and didn't present them to the defense  
12 until 22 days after the witness' testimony was  
13 completed in this trial.

14 THE COURT: Well, it seems to me that all  
15 the evidence I've heard this afternoon has been to  
16 the contrary; that they weren't aware of anything  
17 that -- here until this weekend. So I can't agree  
18 with you that what you said there is --

19 MS. JACKS: Well, I'm assuming what the  
20 Court --

21 THE COURT: -- that the attorneys held on  
22 to the notes. I haven't heard anything.

23 MS. JACKS: Well, in my motion to dismiss,  
24 what I represented is these notes, which are now  
25 Exhibit T, were presented to us last night. They're



1 notes from a meeting with Mr. Urquizo on January 22,  
2 2018, as this witness just testified. And the notes  
3 on their face are exculpatory. As I filed --

4 THE COURT: I understand your position.

5 MS. JACKS: Okay. Thank you.

6 THE COURT: I misunderstood what you said.

7 MS. ARMIJO: Your Honor, if I may, I have  
8 an email from my supervisor. I wanted to inform the  
9 Court because it's different than what they  
10 previously told me.

11 THE COURT: Okay.

12 MS. ARMIJO: So our position is that we  
13 believe that Mr. Beck's testimony is not relevant.  
14 Outrageous Government conduct doesn't apply here  
15 because the conduct at issue doesn't relate to the  
16 creation of the crime or coercion to commit the  
17 crimes. And we have a case on that. It's the Dyke  
18 case, which is a Tenth Circuit case that I believe  
19 was written by now-Justice Gorsuch. The issue is  
20 Giglio and the good faith/bad faith of a prosecutor  
21 is not relevant to Giglio.

22 If the Court wants to question Mr. Beck on  
23 the issue personally, of course, that is preferable  
24 to having Mr. Beck testify. And if the Court is  
25 still inclined to have -- oh, and here's the cite,

1 718 F.3d 1282. Again, that's 718 F.3d 1282.

2 If, Your Honor, if you're still inclined  
3 that you want Matt to testify, and if you ask if our  
4 office objects on Touhy grounds, we may then comply.  
5 But our position is still that, as I stated before,  
6 we don't think it's relevant. And certainly, if the  
7 Court has questions for Mr. Beck, the Court can  
8 inquire. And that's preferable to testimony.

9 THE COURT: All right. So I don't know  
10 how you want to proceed.

11 MS. JACKS: I'm prepared to proceed with  
12 the testimony of this witness.

13 The case law that I cited regarding  
14 outrageous Government conduct, I'm not alleging that  
15 they created this crime. What I'm saying -- and I  
16 think the defense -- or the assertion has been a way  
17 to challenge any sort of Government conduct that  
18 violates the Due Process Clause of the Constitution.

19 So it's my position that, by withholding  
20 notes for 22 days after a witness testifies, that  
21 appear on their face to be exculpatory, in an effort  
22 to gain a tactical advantage at trial is outrageous.  
23 And it's just a separate claim on top of the  
24 Brady-Giglio violation.

25 THE COURT: All right. Well, go ahead.

1 If you want to proceed with your direct examination  
2 of Mr. Sainato, go ahead and do that.

3 MS. JACKS: Thank you.

4 BY MS. JACKS:

5 Q. Agent Sainato, did Mr. Urquizo tell you on  
6 January 22, 2018 that when he arrived at Southern,  
7 he was put into yellow pod?

8 A. May I?

9 Q. Do you need to refer to your notes?

10 A. I do, ma'am.

11 Q. Okay. I think that would be at page  
12 54287.

13 A. Yes, ma'am.

14 Q. And did he also tell you that, as he was  
15 on his way to yellow pod, he passed Blue on the way  
16 to the pod?

17 A. Again, if I may. I think what I wrote was  
18 they passed blue pod on the way in.

19 Q. Okay. I'm sorry. And did he tell you as  
20 they passed blue pod, he spoke to Blue, Red, and  
21 Jerry Montoya?

22 A. Yes, ma'am.

23 Q. And who is Blue?

24 A. Mario Rodriguez.

25 Q. And who is Red?

1 A. My understanding, Timothy Martinez.

2 Q. And Jerry Montoya?

3 A. Yes.

4 Q. So he told you on his way in, he spoke to  
5 those three individuals?

6 A. That's what I wrote, yes, ma'am.

7 Q. Did he tell you then that he spoke to the  
8 same three individuals through the door between the  
9 pods?

10 A. If I may. I wrote that: Correction  
11 officer went into Mr. Urquizo's cell to shake it  
12 down. And Urquizo spoke to the trio, referenced  
13 Blue, Red, and Jerry Montoya through the door  
14 between the pods.

15 Yes, ma'am.

16 Q. Did Mr. Urquizo tell you that Rodriguez  
17 asked him if he had the paperwork for Molina?

18 A. Yes.

19 Q. Did Mr. Urquizo tell you on that date that  
20 Mr. Rodriguez passed a note under the door which  
21 asked about the Molina paperwork?

22 A. That's what I wrote in my notes. I don't  
23 remember specifically, but that's what I wrote.

24 Q. Did he also tell you that Rodriguez --  
25 that in the note, Rodriguez said he wanted to have

1 Timothy Martinez, Jerry Montoya, and Jerry Armenta  
2 do the hit on Molina?

3 A. That's also in my notes, yes.

4 Q. And you were writing what was said while  
5 you were in the room?

6 A. Yes.

7 Q. Did Mr. Urquizo tell you the next day  
8 Mario Rodriguez sent him a note saying Molina would  
9 be hit or killed that afternoon?

10 A. Again, that's what I have in my notes.

11 Q. And, again, you were writing what was said  
12 in the room, right?

13 A. Yes, ma'am. I was typing the conversation  
14 that was going on.

15 Q. Did Urquizo say again at that time Mario  
16 Rodriguez said Jerry Montoya, Jerry Armenta, and  
17 Timothy Martinez were going to be tasked with doing  
18 the hit?

19 A. Again, that's what I wrote down from the  
20 conversation.

21 Q. And did he tell you that according to what  
22 Rodriguez told him, it was Daniel Sanchez's job to  
23 cover the camera?

24 A. Again, I'll say that that's what's in my  
25 notes from the conversation, yes, ma'am.

1 Q. And did he tell you that he showered, got  
2 back to his cell, and shortly thereafter he heard  
3 noises that made him know that Molina -- the hit on  
4 Molina had happened?

5 A. Yes, that's also in my notes.

6 Q. Let me just go back, because I missed a  
7 sentence. Prior to Mr. Molina being killed, did  
8 Urquizo tell you that he actually took the paperwork  
9 and attached a letter to it and slid it under his  
10 door to Mr. Herrera?

11 A. Where are we at, ma'am?

12 Q. Back on 54287.

13 A. Where at on the page?

14 Q. The second to the last paragraph.

15 A. Could you repeat the question one more  
16 time?

17 Q. Yes. Did Mr. Urquizo tell you that prior  
18 to Mr. Molina being killed, that he got paperwork  
19 from his property and attached a note to it and slid  
20 it under his door to Carlos Herrera?

21 A. I wrote, "Rodriguez passed Urquizo a note  
22 under the door which also asked if he had the Molina  
23 paperwork or the Montoya paperwork."

24 Q. My question is: Did Mr. Urquizo tell you  
25 that the next day, the day after he got to Southern

1 New Mexico Correctional Facility, that he got the  
2 paperwork and wrote a letter and attached it to the  
3 paperwork and slid it under the door to Carlos  
4 Herrera?

5 A. Oh, I'm sorry. The next paragraph. That  
6 is what I wrote, ma'am. Again, I was typing. I  
7 don't remember. But that is what I wrote from the  
8 conversation.

9 Q. Okay. You were in the room and you could  
10 here what was said, right?

11 A. Yes, ma'am.

12 Q. And you were writing on your computer what  
13 was said during the conversation?

14 A. Yes, ma'am.

15 Q. Did Mr. Urquizo tell you during that same  
16 conversation that he got the paperwork back from  
17 Herrera before Mr. Molina was killed?

18 A. On the next page?

19 Q. Yes.

20 A. Yes, ma'am, that's in my notes.

21 Q. And did Mr. Urquizo tell you on January  
22 22, 2018, that after the murder happened, that he,  
23 Mario Rodriguez, David Calbert, Robert Martinez, and  
24 Roy Martinez all discussed hitting or killing Daniel  
25 Sanchez?

1           A.     Yes, ma'am. That's also in my notes from  
2 the conversation.

3           Q.     And did he tell you the reason they were  
4 discussing hitting or killing Daniel Sanchez was  
5 because he did not participate in the Molina  
6 homicide or even cover the camera like he was  
7 supposed to?

8           A.     That is what I wrote down, yes, ma'am.

9           Q.     And you were writing down what was said  
10 during the conversation, weren't you?

11          A.     Yes, ma'am.

12          Q.     And did Mr. Urquizo also discuss with you  
13 that there was some concern about their ability to  
14 get to Mr. Sanchez so they discussed killing his  
15 brother instead?

16          A.     That, I do remember, yes, ma'am.

17                MS. JACKS: May I just have a moment?

18                THE COURT: You may.

19          Q.     Okay. Agent Sainato, I just want to go  
20 back over the things that I asked you about, and ask  
21 you if that's in the 302 that is Exhibit S.

22          A.     Okay.

23          Q.     So let's start with: Does the 302 that is  
24 Exhibit S, that purports to document this  
25 conversation, say that there was no property -- that



1 Urquizo said there was no property officer on duty  
2 when he got to Southern?

3 A. Are you asking if that's in the 302?

4 Q. Right.

5 A. No.

6 Q. Does the 302 say anything about him  
7 speaking to Blue, Red, and Jerry Montoya as he  
8 passed blue pod?

9 A. No.

10 Q. Does it say anything about him speaking to  
11 Blue, Red, and Jerry Montoya through the door  
12 between the pods thereafter?

13 A. No, ma'am.

14 Q. Does it say anything about Rodriguez  
15 asking him about the paperwork for Molina?

16 A. No, ma'am.

17 Q. Does it say anything about Rodriguez  
18 passing a note under the door, stating that it was  
19 his plan to have Timothy Martinez, Jerry Montoya,  
20 and Jerry Armenta do the hit on Molina?

21 A. That is not in the 302.

22 Q. I'm sorry. I didn't hear.

23 A. It's not in the 302.

24 Q. Does the 302 say anything about Mr.  
25 Urquizo passing the paperwork, along with a letter,

1 under the door to Mr. Herrera?

2 A. No, ma'am.

3 Q. Does the 302 say anything about Rodriguez  
4 sending a letter to Mr. Urquizo, saying that Molina  
5 would be hit that afternoon?

6 A. No, ma'am.

7 Q. Does the 302 say anything about Mr.  
8 Urquizo telling you that Mario Rodriguez told him  
9 Jerry Montoya, Jerry Armenta, and Timothy Martinez  
10 were tasked with the hit?

11 A. No, ma'am.

12 Q. Does the 302 say anything about the task  
13 that Daniel Sanchez was assigned, to cover the  
14 camera?

15 A. No.

16 Q. Does the 302 say anything about the  
17 discussion that Mr. Urquizo reported having after  
18 the murder with Mario Rodriguez, David Calbert,  
19 Robert Martinez, and Roy Martinez about killing Mr.  
20 Sanchez?

21 A. No, ma'am.

22 Q. And does the 302 say anything about the  
23 discussion, the further discussion about killing Mr.  
24 Sanchez, because he did not participate in the  
25 Molina homicide or even cover the camera like he was

1 supposed to?

2 A. No, ma'am.

3 MS. JACKS: I have nothing further.

4 THE COURT: Thank you, Ms. Jacks.

5 We kind of broke up the defendants. Did  
6 anybody else have any direct that they wanted  
7 before -- not seeing any, Mr. Castellano, are you  
8 going to conduct the cross-examination of Mr.  
9 Sainato?

10 MR. CASTELLANO: I'm starting with the  
11 first part of the hearing regarding the box of  
12 documents.

13 MS. JACKS: Your Honor, I would object to  
14 Mr. Castellano or Mr. Beck questioning Agent Sainato  
15 about the conversation with Lupe Urquizo. They're  
16 both witnesses.

17 MR. CASTELLANO: That's why I'm starting  
18 with the box of documents, Your Honor. This is  
19 going to be broken in two pieces.

20 THE COURT: Okay.

21 MR. CASTELLANO: And do we have all of the  
22 exhibits? I don't know if I have all of them.

23 MS. JACKS: I think they're stacked up  
24 there.

25

1 CROSS-EXAMINATION

2 BY MR. CASTELLANO:

3 Q. Agent Sainato, let me try to go through  
4 these one at a time, starting with Defendants'  
5 Exhibit A. Do you know where this document came  
6 from?

7 A. I believe it's Agent Acee's notes on  
8 briefing the director.

9 Q. So do you recognize these as his notes  
10 from his meeting this week?

11 A. Yes, sir.

12 Q. Do you know how these got into the box?

13 A. Not a clue. Actually, I don't believe  
14 they were in the box. I think it somehow got mixed  
15 in when we were making copies of all the materials.

16 Q. Okay. So Defendants' Exhibit A, can you  
17 affirmatively state that this was not part of Mario  
18 Rodriguez' property?

19 A. Yes, sir.

20 Q. Let me take that one off. Defendants'  
21 Exhibit B. I don't know if you're familiar with the  
22 discovery in this case or the state case, but does  
23 it look like a summary of what was captured on  
24 cameras?

25 A. Yes.

1 Q. And are you aware of the fact that Mr.  
2 Rodriguez was charged in the state case first?

3 A. No.

4 Q. And if he was charged in the state case,  
5 would it be fair to assume he got discovery from the  
6 state case?

7 A. Yes.

8 Q. Given the fact that this document doesn't  
9 have a Bates number on it, would it lead you to  
10 conclude that he got this from another source?

11 A. I suppose.

12 Q. So if he was in a state case, and they had  
13 discovery, then this could be related to the state  
14 case?

15 A. Correct.

16 MR. CASTELLANO: Before I go forward, Your  
17 Honor, I need to just make the record because I'm  
18 not sure the source of this information. I believe  
19 Ms. Jacks questioned Agent Sainato about Robin  
20 Martinez, also known as Robin Lovelace. I think  
21 Mr. Jewkes previously represented --

22 MR. JEWKES: Right here.

23 MR. CASTELLANO: -- previously represented  
24 Ms. Lovelace. So I want to make sure we clear up  
25 any issues regarding any potential conflicts. She's

1 represented by him previously in that case, which is  
2 a wiretap case.

3 THE COURT: Is this a wife? A girlfriend?  
4 What is this?

5 MR. CASTELLANO: The Robin Martinez was  
6 listed on the numbers that we're going to be talking  
7 about here in a second. Actually, let me show you.  
8 Defendants' Exhibit C is one of the letters they  
9 referred to, which is a letter from -- purportedly  
10 from Robin Martinez to Timothy Martinez. And Ms.  
11 Jacks asked if Robin Martinez was also known as  
12 Robin Lovelace. And my understanding is that  
13 Mr. Jewkes represented Ms. Lovelace in the  
14 investigation for which they've been asking about.

15 So we don't have to do it today, but I  
16 just need to bring it up with the Court that we may  
17 need to address that at some point.

18 THE COURT: Okay.

19 MR. JEWKES: Your Honor, if we may?

20 THE COURT: You may.

21 MR. JEWKES: I'd like to get into it  
22 today.

23 THE COURT: Well, go ahead and say  
24 whatever you want to say on it.

25 MR. JEWKES: Your Honor, I was appointed

1 by the Court in 2015 to represent Ms. Lovelace.

2 THE COURT: Was this a case up here in Las  
3 Cruces, or --

4 MR. JEWKES: Yes, sir.

5 THE COURT: A federal case?

6 MR. JEWKES: Yes, sir, Judge Brack,  
7 presiding judge, a very large methamphetamine case.  
8 My client, Ms. Lovelace, made it clear to me that  
9 she didn't want to go to trial. We negotiated the  
10 case. She got a fairly lengthy prison sentence.  
11 She did not cooperate.

12 About a week or 10 days before this trial  
13 started, I got a call from Ms. Armijo, asking me if  
14 Robin had given me any information about the SNM  
15 case. Prior to that, I was aware or at least I  
16 thought she was dating someone in SNM, because I had  
17 been warned of that by some other member of the U.S.  
18 Attorney's Office, and I believe it was Terry  
19 Abernathy; is that correct?

20 MS. ARMIJO: Ms. Abernathy is the one who  
21 prosecuted Robin Lovelace. It was a wiretap  
22 investigation.

23 MR. JEWKES: At that time I inquired, I  
24 believe of Ms. Abernathy, as to -- because I was  
25 concerned as to whether or not there was a conflict,

1 because I told her I represented a defendant who has  
2 been indicted in the SNM case. I never got an  
3 answer back.

4 So at any rate, about a week or 10 days  
5 before jury selection in this case, so that would  
6 have been, I'm guessing, mid January, past January,  
7 Ms. Armijo asked me what, if anything, Robin had  
8 told me about SNM, Timothy Martinez, so on. And I  
9 responded, "Nothing," because that's the case. Ms.  
10 Lovelace was not particularly interested in talking  
11 to me about SNM. All she was worried about was her  
12 case.

13 So now, based on the latest document dump  
14 we got, I have to ask myself why the Government was  
15 so concerned, just before jury selection, about  
16 whether or not Ms. Lovelace had given me  
17 information. Because it's apparently becoming  
18 somewhat apparent that she and Timothy Martinez were  
19 fabricating stories, if it's to be believed, what's  
20 in that discovery.

21 So I wanted to make that disclosure to the  
22 Court. Yes, I did represent Ms. Lovelace. She  
23 would not discuss her love life with me or the fact  
24 that she was at one time dating an SNM member --  
25 well, I take it back. I got kind of a warning from



1 the U.S. Attorney's Office about Ms. Lovelace's  
2 relationship, and so I did lecture Ms. Lovelace  
3 about getting involved in something like that.

4           Apparently, the US Marshal service was  
5 concerned because there were telecommunications  
6 between Ms. Lovelace and someone in SNM. And they  
7 never would give me his name. It's very apparent  
8 now who it was.

9           But anyway, that's the extent of my  
10 knowledge about Ms. Lovelace and the SNM.

11           Your Honor, I'll answer any questions.

12           THE COURT: All right. I don't think I  
13 have any at the present time. This is all catching  
14 me a little cold.

15           MR. JEWKES: I know. I know.

16           THE COURT: All right. Thank you,  
17 Mr. Jewkes.

18           Why don't we do this, Mr. Castellano. I  
19 need to give Ms. Bean a little break, so why don't  
20 we let her rest her fingers, and then we'll resume  
21 with your cross-examination of Mr. Sainato.

22           All right. We'll be in recess for a few  
23 minutes.

24           (The Court stood in recess.)

25           THE COURT: All right. We got everybody

1 back. Looks like everybody has got a defendant and  
2 attorneys. All right.

3 Mr. Sainato, I'll remind you that you're  
4 still under oath.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Mr. Castellano, if you wish to  
7 continue your cross-examination of Mr. Sainato, you  
8 may do so at this time.

9 MR. CASTELLANO: Thank you, Your Honor.

10 BY MR. CASTELLANO:

11 Q. Agent Sainato, did you know that -- well,  
12 even when you had this box, that Robin Lovelace and  
13 Robin Martinez were the same person?

14 A. No, sir.

15 Q. I'm showing you Defendants' R. And this  
16 is your report at the bottom that says, on September  
17 1st: Due to external circumstances, the UCE did not  
18 meet Lovelace and the transaction did not take  
19 place.

20 Do you remember that?

21 A. Not really, sir. I was maybe a little  
22 over a month out of the Academy on that date. I  
23 don't -- until I was shown that exhibit, I did not  
24 remember that report.

25 Q. Do you recall that the operation was

1 called off because the agents found that she was  
2 part of a wiretap investigation?

3 A. No, I did not know that.

4 Q. Actually, let me show you that one more  
5 time. It does says: Due to external circumstances,  
6 case agents called off that operation?

7 A. Yes, sir.

8 Q. This is Defendants' C, the letter  
9 purportedly between Robin Martinez and Timothy  
10 Martinez, dated 10/22 of '15. Do you know if you  
11 read this letter at all?

12 A. Did I?

13 Q. Yes.

14 A. Not until it was on the screen.

15 Q. So when you had the box of documents, was  
16 this something you would have been looking for in  
17 terms of correspondence between people?

18 A. No, not specifically.

19 Q. And when you saw the name Monster in  
20 there, would you know if that was an a/k/a for  
21 somebody or a nickname? Would that have any meaning  
22 to you?

23 A. No, I don't know who Monster is.

24 Q. And would you know whether or not Monster  
25 was the same person as B, or whether they were

1 different people?

2 A. I don't.

3 Q. So on the next page where it says, "I hope  
4 our Monster will keep in touch with us when he  
5 leaves," did you know who that was and where he was  
6 going?

7 A. No, sir.

8 Q. As far as you can tell, by just glancing  
9 at it, does it look like anything more than a letter  
10 between two people?

11 A. That's what it looks like on its surface.

12 Q. Turning to Defendants' D, which is  
13 purportedly another letter between Robin Martinez  
14 and Timothy Martinez, does it have any significance  
15 to you that one inmate's mail was in another  
16 inmate's property?

17 A. No, sir.

18 Q. Did you know whether that was even a  
19 violation of prison rules, or whether it was  
20 allowed? What did you know?

21 A. I don't.

22 Q. Were you familiar with any prison rules on  
23 whether or not that was permitted?

24 A. No, sir.

25 Q. I'm showing you the first page of that

1 letter. Does it look like anything else, dated  
2 10/23 of '15, other than a letter between two  
3 people?

4 A. Not on its surface, no, sir.

5 Q. On the second page, which is highlighted,  
6 when it says, "Yeah, I would like to know what ole  
7 boy had to say, but you already know that his  
8 version of the story does not match up to the  
9 evidence or to everyone else's statements," did that  
10 have any significance to you?

11 A. I don't know what that's referring to, no,  
12 sir.

13 Q. So at the bottom where it says, "Why did  
14 they move you again, and they left our Monster over  
15 there by himself. That's messed up," did you have  
16 any idea what that meant or what that referred to?

17 A. No, sir. I don't know who Monster is.

18 Q. The same thing with Defendants' E, another  
19 letter between Robin Martinez and Tim Martinez,  
20 apparently also dated on 10/23 of '15. Did this  
21 appear to you to be anything more than a letter  
22 between two people?

23 A. No, sir.

24 Q. And on the next page of that exhibit where  
25 it's highlighted, "Tell our Monster" -- and there is

1 something between "B" and "hello." Do you know if  
2 that's "Monster" and "B," or if it's just "Monster"  
3 and some scribble?

4 A. I don't know.

5 Q. Can you tell whether or not Monster and B  
6 are even the same person?

7 A. No, sir.

8 Q. The next page is highlighted. "Let me  
9 know if you talk to the attorney. I really want to  
10 know."

11 Does that mean anything to you?

12 A. No, sir.

13 Q. On Defendants' F, dated November 19th of  
14 2014, if that was a request for documents by Mario  
15 Rodriguez, are you aware of whether he was an active  
16 SNM member in November of 2014?

17 A. I believe he was.

18 Q. And if he was seeking documents on  
19 somebody who had cooperated in the case, would that  
20 be consistent with an SNM member trying to figure  
21 out who is ratting?

22 A. Yes, sir.

23 Q. And, in fact, wouldn't it be his duty to  
24 seek out rats and potentially kill them?

25 A. That's my understanding.

1 Q. Is that inconsistent with SNM membership?

2 A. No, sir.

3 Q. I'll ask the same thing of Defendants' G.

4 Would you be surprised if an active SNM member was  
5 seeking out information on other people in other  
6 cases?

7 A. No, sir.

8 Q. And seeing a cause number, were you aware  
9 of whether or not he was a co-defendant in that case  
10 seeking information?

11 A. I don't know what that cause number  
12 relates to.

13 Q. And Defendants' I. This is the one where  
14 it says at the bottom, "Plus he was scared of me.  
15 Even when I was asleep he was scared. One day  
16 during court he told me that he couldn't sleep. Why  
17 is that?"

18 Was Mario Rodriguez known as a scary guy?

19 A. I don't know.

20 Q. Did you ever hear rumors of him biting  
21 people's ears off?

22 A. Yes, sir.

23 Q. Did you know that he had a reputation that  
24 was brought up in trial as a scary person?

25 A. No, sir. This is my first time in this

1 courtroom.

2 Q. And so you didn't see a video of him  
3 stabbing someone and then biting his ear off; is  
4 that correct?

5 A. I have seen a video of him stabbing  
6 somebody in a prison facility.

7 Q. And that's pretty scary, isn't it?

8 A. Yes, sir.

9 Q. They marked Defendants' J, but nothing is  
10 highlighted. Did that have any significance to you?

11 A. No, sir.

12 Q. And when you initially reviewed the  
13 documents, do you know if you even saw this  
14 document?

15 A. No, sir, I don't recall it.

16 Q. And Defendants' K, do you know the  
17 significance of one inmate having a commissary form  
18 with another inmate's name on it?

19 A. No, sir.

20 Q. Do you know if that's a violation of rules  
21 or what any of this information means?

22 A. No, sir.

23 Q. And did you know the connection between  
24 Mauricio Varela, whose name is on here, and Mario  
25 Rodriguez?



1 A. I believe them both to be SNM members.

2 Q. I'm showing you Defendants' H. There are  
3 some names highlighted on it, including Jerry  
4 Armenta and Jerry Montoya. Did you know those to be  
5 SNM Gang members along with Mr. Rodriguez?

6 A. Yes, sir.

7 Q. On this page is also something referring  
8 to four directions, north, south, east, west; four  
9 seasons; four parts of the day; and four divisions  
10 of life. Did that mean anything to you?

11 A. Not before the initial examination when I  
12 was made aware of it.

13 Q. And so what's your understanding now of  
14 that information?

15 A. That it relates to SNM prose, for lack of  
16 a better word.

17 Q. And so if it had something to do with the  
18 structure of the organization, would that be  
19 consistent with SNM membership?

20 A. Yes, sir.

21 Q. And are you aware of whether Mr. Rodriguez  
22 testified about the organization as explained to him  
23 by Mr. Baca?

24 A. I don't know what Mr. Rodriguez testified  
25 to.

1 Q. Also, on the next page it looks like at  
2 the bottom, highlighted, is "Mauricio Varela." Did  
3 you see that name a little bit ago on the commissary  
4 form?

5 A. Yes, sir.

6 Q. And were you aware of whether or not Mr.  
7 Varela was moved out of state after the Molina  
8 murder?

9 A. I don't recall specifically.

10 Q. And do you recognize his name as that of  
11 another SNM Gang member?

12 A. As far as I know, there is only one  
13 Mauricio Varela.

14 Q. So would you be surprised if an SNM Gang  
15 member had in his address book names and addresses  
16 of other SNM Gang members?

17 A. Not particularly, no, sir.

18 Q. Let me show you another exhibit, which is  
19 Defendants' H. Is it basically an address book?

20 A. Yes.

21 Q. So does it have in it tabs and things of  
22 that nature consistent with an address book?

23 A. Yes, sir.

24 Q. Now, turning to that exhibit, it does have  
25 the name on here, "Honorable Darren Kugler." Did

1 you know that was a state district judge?

2 A. No, sir.

3 Q. Did you know that 201 West Picacho is the  
4 address to the State District Courthouse here in Las  
5 Cruces?

6 A. Not until I looked it up, but I'm aware of  
7 that now, yes, sir.

8 Q. So you're aware that is not a judge's home  
9 address, but a business location?

10 A. Correct.

11 Q. Defendants' P. This refers to Mr.  
12 Rodriguez, apparently from the writing, hitting an  
13 officer in the face with a sock with a soda can  
14 inside. Do you see that?

15 A. Yes.

16 Q. Are you aware that he was actually  
17 cross-examined on that incident at trial?

18 A. No, sir. Again, I wasn't present.

19 Q. And Defendants' Q says, "I'm in constant  
20 need for conflict and enemies. Otherwise, I wage  
21 war upon myself."

22 What meaning does that have to you?

23 A. Sounds poetic. I don't know.

24 Q. And, in fact, do the other statements on  
25 that page seem somewhat poetic to you?

1 A. Yes, sir.

2 Q. One part says, "to not be dismissed by the  
3 gravity of our either lifes or lies"?

4 A. Yes, sir.

5 Q. I don't know what exhibit this is. There  
6 is a 149 in the lower left-hand corner of this  
7 document. So there is a claim in here that someone  
8 was written up for assaults and threats. Would that  
9 be consistent with what SNM Gang members do?

10 A. I would say so, yes, sir.

11 Q. Would you be surprised if an SNM Gang  
12 member was written up for assaults or threats?

13 A. No, sir.

14 Q. Or for any act of violence?

15 A. No, sir.

16 Q. The same thing with Defendants' N, talking  
17 about, "I did every " -- looks like maybe -- "detail  
18 with a" -- that's the one that's hard to read --  
19 "pride." Does this purport to be some sort of  
20 conversation? Does it look like there's a  
21 question/answer conversation on this page?

22 A. Yes, sir.

23 Q. Do you know why that is?

24 A. No, sir.

25 Q. And if somebody is proud about committing

1 an act of violence as an SNM member, is that  
2 something that surprises you?

3 A. No, sir.

4 Q. The same thing with Exhibit O, referring  
5 to, "myself and homie were hatching a" -- can you  
6 read that? "A plan to make the other person PC so  
7 he could have a homie as his bunky." Would you be  
8 surprised if an SNM member bulldogged somebody to  
9 get him out of his cell?

10 A. No, sir.

11 Q. Looking at Defendants' L, is this the  
12 email you sent as quickly as you could after finding  
13 out about the documents?

14 A. Yes, sir.

15 Q. And did you try as best you could to  
16 document what happened to the documents, how you got  
17 them, and how they were misplaced?

18 A. Yes, sir.

19 Q. Now, when you obtained those documents,  
20 did you -- what was the purpose?

21 A. Like I said before, we were made aware  
22 that there was property of several SNMers. We took  
23 a look at it just to see what was there. Like I  
24 said before, it was kind of a nonevent. It was just  
25 shoes, books, clothing, hygiene products.

1           The only thing that caught my eye was this  
2 stack of documents. So I, instead of standing in  
3 the prison facility, going through them, I took them  
4 back to my cubicle to go through.

5           Q. And once you had them in your possession,  
6 did you know if you had authority to look through  
7 the documents of a charged defendant?

8           A. I believe I did.

9           Q. Why did you think that?

10          A. Because it was inmate property.

11          Q. So that was something you thought you did  
12 not need a warrant for to search; is that correct?

13          A. Correct. Particularly that we're looked  
14 at as the same as Corrections, and they have the  
15 authority to do that, as well.

16          Q. Now, you said you were looking for certain  
17 documents in legal material. So if you had the  
18 document in your hand, how quickly would you look  
19 through them to determine if it was something that  
20 might be of use to you?

21          A. Like a deck of cards, shuffle through.  
22 Maybe a little bit more. But just kind of a quick  
23 scan.

24          Q. What is something that you thought would  
25 have caught your eye when you reviewed the

1 documents?

2 A. Discovery material, anything that would be  
3 described as paperwork.

4 Q. When you say "paperwork," does that have a  
5 specific meaning in terms of a case like this?

6 A. Yes, sir.

7 Q. What does that mean?

8 A. "Paperwork" is what I understand the SNM  
9 uses to confirm a hit on somebody.

10 Q. There is a discussion here of purportedly,  
11 in Defendants' J, about a letter coming from Styx.  
12 Do you remember that?

13 A. Yes, sir.

14 Q. And were you aware of the fact that there  
15 has been testimony in this case that Styx did have  
16 contact with people in the SNM from out of state?

17 A. I don't know what the testimony in this  
18 case is.

19 Q. Or that Jake Armijo testified he sent  
20 Suboxone to Mr. Archuleta?

21 A. I don't know what Mr. Armijo testified to.

22 Q. Or the fact that somebody called Mr.  
23 Archuleta after Julian Romero was assaulted?

24 A. I did not know that.

25 Q. So once you looked through this -- and I

1 understand the Court will use a different standard  
2 here -- but once you looked at this, was there  
3 anything of significance to you when you looked  
4 through the box?

5 A. I did not note anything, no, sir.

6 Q. And as insignificant as it was to you,  
7 were you actually going to return these documents  
8 and the whole box of material back to the Department  
9 of Corrections?

10 A. Yes, sir.

11 Q. Why is that?

12 A. Because that's where it belonged.

13 Q. And so did it have any significance to you  
14 once you looked through it?

15 A. No, sir.

16 MR. CASTELLANO: May I have a moment, Your  
17 Honor?

18 THE COURT: You may.

19 MR. CASTELLANO: Thank you, Your Honor. I  
20 think I'm ready to pass the witness. I just need to  
21 check my notes real quick.

22 Do you have a photocopy of the address  
23 book? I'm going to mark that as Government's  
24 Exhibit 1 for this hearing and move its admission.

25 THE COURT: That's the materials that are



1 in the exhibits here?

2 MR. CASTELLANO: Yes, sir. I will try to  
3 find --

4 THE COURT: You're just pulling out the  
5 address portion?

6 MR. CASTELLANO: I'm actually introducing  
7 the whole book. And it's Defendants' H, and the  
8 book. So Defendants' H is a photocopy of the  
9 contents of the address book.

10 THE COURT: All right. So Defendants'  
11 Exhibit -- are you making it your own?

12 MR. CASTELLANO: Yes. This will be  
13 Government's Exhibit 1.

14 THE COURT: Any objection to Government's  
15 Exhibit 1 coming into evidence?

16 MS. JACKS: No.

17 MS. DUNCAN: No, Your Honor.

18 MS. BHALLA: No, Your Honor. I think  
19 that, you know, what I had spoken to Mr. Castellano  
20 about with this particular exhibit, that we may want  
21 to redact the Social Security information. I don't  
22 know. Because that is contained in the address  
23 book.

24 THE COURT: All right.

25 MS. BHALLA: And that's why I waited to

1 move those into admission until we had a chance to  
2 look at the redactions. I don't know if the  
3 Government still intends to do that or not.

4 MR. CASTELLANO: I think, Your Honor, I  
5 don't know if the Court needs to do anything else  
6 with this book since the Court has a photocopy of  
7 the contents. I just wanted the Court to be able to  
8 see the book as is.

9 THE COURT: If you don't have any  
10 objection, why don't I admit it, and then if we need  
11 to come back and do something, we can.

12 MS. BHALLA: That's fine, Your Honor.  
13 Thank you. And if the Government is going to move  
14 that into admission, then I can withdraw Defendants'  
15 Exhibit H. I think that might be a more legible  
16 copy for the Court, in any event.

17 THE COURT: Now, you know you haven't  
18 moved --

19 MS. BHALLA: I know. I was waiting, Your  
20 Honor, to give Mr. Castellano a chance to review  
21 those exhibits for those issues. I was going to do  
22 that when he finished with this witness, Your Honor.

23 THE COURT: All right. So I'll admit  
24 Government's Exhibit 1, will be admitted into  
25 evidence.

1 (Government's Exhibit 1 admitted into  
2 evidence.)

3 MR. CASTELLANO: Thank you, Your Honor.  
4 And I don't have any objection to Defendants' H  
5 being admitted, as well, if the Court needs to use  
6 it for another purpose, since the book, itself,  
7 probably will not be -- the contents, itself, may  
8 not be part of the record. So it may be a more  
9 complete record with the defendants' exhibit, as  
10 well.

11 THE COURT: Do you want to go ahead and  
12 move your H, Ms. Bhalla?

13 MS. BHALLA: Yes, Your Honor.

14 THE COURT: Any objection to that? Not  
15 seeing any, Defendants' Exhibit H will be admitted  
16 into evidence.

17 (Defendants' Exhibit H admitted into  
18 evidence.)

19 MR. CASTELLANO: And with that, I pass the  
20 witness.

21 THE COURT: All right. Thank you, Mr.  
22 Castellano. Ms. Armijo.

23 MR. CASTELLANO: I pass to Ms. Armijo.

24 THE COURT: All right. Ms. Armijo.

25 MS. ARMIJO: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MS. ARMIJO:

3 Q. Agent Stemo, (sic) I don't know if it's up  
4 here. Do you recall sitting in on an interview --  
5 well, let me ask you -- let me go back before that.  
6 Do you recall the week before trial that you and  
7 other agents came into town for the purpose of  
8 assisting with pretrial interviews?

9 A. Yes, ma'am.

10 Q. I'm sorry?

11 A. Yes.

12 Q. And was part of that process agents would  
13 sit in, and if there was any new information, then  
14 agents would then write a 302 for the purpose of  
15 disclosure to the defense?

16 A. Yes.

17 Q. And is that the purpose that you sat in  
18 the interview with Lupe Urquizo?

19 A. That was my understanding.

20 Q. And --

21 THE COURT: Ms. Armijo, just so I know  
22 where I am in this, what is the date of this 302?

23 MS. ARMIJO: Your Honor, I was looking for  
24 it.

25 THE WITNESS: Ms. Armijo, I think they're

1 Exhibits S and T.

2 MS. JACKS: Your Honor, it's January 22,  
3 2018.

4 BY MS. ARMIJO:

5 Q. All right. And I'm looking at Defendants'  
6 Exhibit S. Does this appear to be a 302 written  
7 about that meeting with Mr. Urquizo?

8 A. Yes, ma'am.

9 Q. Also present at the meeting, in addition  
10 to Matt Beck, was Mr. Urquizo's attorney, defense  
11 attorney?

12 A. Yes, ma'am.

13 Q. And was the person that was doing the  
14 questioning, was that Mr. Beck?

15 A. Yes.

16 Q. And as a result of the -- and during that  
17 interview --

18 THE COURT: Can I ask a question, just so  
19 I'm on the right track? When you were saying, Ms.  
20 Jacks, that the Government's attorneys had sat on  
21 notes for seven months, what were you referring to?

22 MS. JACKS: Well, I think there might be a  
23 misunderstanding. The things that were sat on for  
24 seven months were the Mario Rodriguez property  
25 documents that I think this witness was just

1 questioned about by Mr. Castellano.

2 The report that -- the Lupe Urquizo  
3 interview notes were sat on by the Government  
4 between January 22nd and last night.

5 THE COURT: So you're withdrawing the  
6 statement that the attorneys sat on the Mario  
7 Rodriguez box for seven months?

8 MS. JACKS: You're correct, Your Honor. I  
9 mean, if I said that, I misspoke. Because it was  
10 the FBI that sat on that for seven months, not these  
11 attorneys.

12 These attorneys sat on the notes of the  
13 Lupe Urquizo interview from January 22nd until  
14 February 28th, 22 days after Mr. Urquizo testified.

15 THE COURT: All right, Ms. Armijo. Thank  
16 you, Ms. Jacks.

17 Ms. Armijo.

18 MS. ARMIJO: Thank you, Your Honor.

19 BY MS. ARMIJO:

20 Q. And so does this appear to be a 302 that  
21 was written by another agent?

22 A. Yes.

23 Q. Yes?

24 A. Yes, ma'am.

25 Q. And in doing so, did you provide that

1 agent with your notes which are Exhibit T?

2 A. Yes, ma'am.

3 Q. And I guess that begs the question, then:  
4 Why is it that another agent wrote a 302 based upon  
5 your sitting in on the interview?

6 A. My understanding was that I was supposed  
7 to take copious notes. I wasn't sure. I'd never  
8 done a pretrial interview before. I waited for word  
9 from Mr. Beck as to whether or not a 302 needed to  
10 be generated. By the time we got word on that, I  
11 was out of the office and couldn't write the report  
12 myself, so I sent my notes to Agent Stemo to  
13 generate the report.

14 Q. So you didn't understand that you were  
15 supposed to write a 302, but at some point you were  
16 requested by the U.S. Attorney's Office to produce a  
17 302?

18 A. Yes, ma'am.

19 Q. And the purpose of that 302 was to provide  
20 new information to the defense about possible  
21 statements that had not previously been disclosed?

22 A. That's correct.

23 Q. I guess initially you didn't understand  
24 that that was the purpose of agents sitting in,  
25 potentially?

1           A.    I wasn't entirely clear. I just knew I  
2 was supposed to take notes on the interview.

3           Q.    Okay. And then, when you learned that  
4 there was information that needed to be disclosed to  
5 the defense, you were out of town; is that right?

6           A.    I was out of the office, yes, ma'am.

7           Q.    Okay. Out of the office. And so then you  
8 tasked Special Agent Stemo with actually taking  
9 information from your notes that would be new  
10 information that needed to be disclosed?

11          A.    Yes.

12          Q.    And that's what was done, and that's why  
13 we have Agent Stemo writing this, so that it could  
14 be disclosed?

15          A.    Correct.

16          Q.    And the date of this -- it looks like the  
17 date it was drafted was 1/28/2018; is that correct?

18          A.    Yes.

19          Q.    All right. And so did you after -- so you  
20 were out of the office, and this was done by Agent  
21 Stemo. And then after that, was your understanding  
22 that Agent Stemo basically covered what you were  
23 supposed to do?

24          A.    Yes, ma'am.

25          Q.    And I believe you indicated -- and I'm



1 looking at Exhibit T -- going back to Exhibit Number  
2 S, were you aware that the U.S. Attorney's Office  
3 was diligently trying to get any new information out  
4 to the defense?

5 A. I believe so.

6 Q. Would that be the purpose of trying to get  
7 a new 302 out -- by 302, a new report out with  
8 additional information?

9 A. That would be logical, yes, ma'am.

10 Q. Okay. And is this the first time that  
11 you -- when did you start as an FBI agent?

12 A. I graduated the Academy in July, end of  
13 July 2015.

14 Q. And then did you come to Albuquerque on  
15 your first assignment?

16 A. Yes, ma'am.

17 Q. And so is this case -- was this the first  
18 time that you prepared in pretrial interviews, as  
19 far as assisting and getting witnesses ready?

20 A. Yes.

21 THE COURT: Ms. Armijo, I think we're  
22 going to have to shut her down for the night.

23 MS. ARMIJO: Okay, your Honor. Thank you.

24 THE COURT: Let me make a couple of  
25 comments. One is, remember, I need to see letters

1 from everyone, emails, something about these jury  
2 instructions. So you have a clean set. I haven't  
3 been able to proof them today because there has been  
4 a lot of paper coming at me. So what you have is  
5 what I'm taking home tonight, too. So start sending  
6 me emails, letters. Tell me what your comments are.

7 I think this issue right here that we've  
8 been focused on this afternoon, I think it's going  
9 to take too much thought for me to make a very quick  
10 decision on whether to grant it or deny it. I'm  
11 doing the best I can to absorb a lot of information  
12 here. But the chances are, you know, I'm not going  
13 to be able to make a very informed decision about  
14 materiality, how it affected strategy. I'll listen  
15 to the Government as to how much came in through  
16 other sources.

17 So I do encourage everybody to work this  
18 evening and overnight and in the morning, to come up  
19 with curative remedies to moving forward so that we  
20 can bring this evidence to a conclusion and get the  
21 case to the jury. That doesn't mean this issue goes  
22 away. But I do encourage us to focus on the fact  
23 that, realistically, I'm not going to do anything  
24 hastily on this motion. And so let's really focus  
25 on curative remedies and solutions to trying to get

1 the evidence in and bringing the trial to a  
2 conclusion.

3 All right. Y'all have a good evening.  
4 I'll see you at 8:30 in the morning.

5 MS. JACKS: Your Honor, with that in mind,  
6 I would ask that Agent Sainato and Agent Stemo be  
7 available tomorrow to testify before this jury.

8 THE COURT: Well, yeah, I think you were  
9 planning on them being here, right?

10 MS. ARMIJO: Yes, Your Honor.

11 And if we could know by the defense who  
12 they want. I did send a list. I requested three  
13 people: Mario Rodriguez, Timothy Martinez, and Lupe  
14 Urquizo.

15 Because it was sent after 4:00, they won't  
16 be transported until after 8:00. But we would like  
17 to know if we need to cancel that.

18 THE COURT: They'll be here pretty early  
19 though, right?

20 MS. ARMIJO: Well, without giving their  
21 location --

22 THE COURT: Sure.

23 MS. ARMIJO: -- they'll be here in the  
24 morning.

25 THE COURT: Okay.

1 MS. ARMIJO: But if they could let us know  
2 if they still want us to bring those people, or if  
3 they want us to cancel.

4 THE COURT: If you know you don't want  
5 them, that's all --

6 MS. JACKS: I do know that I don't want  
7 them. This is Jacks on behalf of Sanchez.

8 THE COURT: You know you don't want them?

9 MS. BHALLA: Defendant Herrera does not  
10 want them, either, for the record.

11 MS. DUNCAN: Defendant Baca does not want  
12 them.

13 MR. VILLA: We don't need anybody, Your  
14 Honor.

15 THE COURT: All right. So you can release  
16 those three.

17 Is there anybody that you do want?

18 MS. JACKS: Sainato and Stemo.

19 THE COURT: Okay.

20 MS. JACKS: And a curative instruction,  
21 unless the Court grants our motion.

22 THE COURT: When you say "curative  
23 instruction," what are you talking about?

24 MS. JACKS: I'll submit a proposed  
25 instruction tonight.

1 MS. BHALLA: Just so the Court's aware,  
2 I've been working on a proposed instruction, as  
3 well. I would like to go ahead and move the  
4 exhibits that we talked about in the motion today  
5 into evidence.

6 THE COURT: Any objection to A through K?  
7 And I think we already have H in.

8 MR. CASTELLANO: No objection, Your Honor.

9 THE COURT: All right. Anybody else have  
10 an objection? So A through K, minus H, which is  
11 already in, will be admitted into evidence.

12 MS. BHALLA: Thank you, Your Honor.

13 (Defendants' Exhibits A, B, C, D, E, F, G,  
14 I, J, and K admitted into evidence.)

15 MR. CASTELLANO: Your Honor, if we rest  
16 tomorrow and the instructions are read, are we going  
17 to close on Monday?

18 THE COURT: You know, I think that would  
19 probably be a good idea.

20 MR. CASTELLANO: Okay.

21 MS. BHALLA: Thank you, Your Honor.

22 THE COURT: Let me just -- if that's where  
23 we're going, let me plant a couple of seeds in your  
24 mind. It would seem to me, a lot of times -- it  
25 would seem to me you would want me to get out of the

1 way tomorrow.

2 And this is the reason: When you take  
3 what you requested as closings, it's right at a full  
4 day, and you don't need me taking up a bunch of time  
5 at the beginning.

6 So I know there has been some requests to  
7 try to, as best we can, to have all the closings on  
8 a single day. And I know that y'all are wanting,  
9 Mr. Villa, to expand a little bit your closings,  
10 which will probably make it a long day.

11 And I'm not sure we can do it. I'm not  
12 making any promises. But it seems to me it would be  
13 wise to get me out of the way tomorrow so that I  
14 don't clog up.

15 Because if I go on Monday, somebody is  
16 going to get pushed over till Tuesday, with the  
17 current schedule. So it would seem to me that it  
18 might be in everybody's interests to get me out of  
19 the way tomorrow. You have a set for your closings,  
20 and then y'all hog all day on Monday.

21 And so does that sound like something to  
22 shoot for?

23 MR. VILLA: We don't need you here Monday,  
24 Judge.

25 THE COURT: What?

1 MR. VILLA: We don't need you here Monday.

2 THE COURT: I'll be around. I want to  
3 watch the show. But that means, really do take a  
4 look at these things tonight so I can be working on  
5 those in the morning and try to be in good shape for  
6 you.

7 MR. LOWRY: Your Honor, on that point, if  
8 we have edits, should just we send them to the  
9 Court?

10 THE COURT: Yeah, just send them in. If  
11 y'all can talk, you need to work out, but the more  
12 you can do, the better, so I'll be in good shape in  
13 the morning.

14 MR. LOWRY: Thank you, Your Honor.

15 THE COURT: All right. Have a good  
16 evening.

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1 March 2, 2018

2

3 MS. FOX-YOUNG: Your Honor, we'll call FBI  
4 Agent Sainato.

5 THE COURT: Mr. Sainato, if you'll come up  
6 and stand next to the witness box on my right, your  
7 left, before you're seated, my courtroom deputy,  
8 Ms. Standridge, will swear you in.

9 JOSEPH SAINATO,  
10 after having been first duly sworn under oath,  
11 was questioned and testified as follows:

12 THE CLERK: Please be seated. State and  
13 spell your name for the record.

14 THE WITNESS: My name is Joseph Sainato,  
15 J-O-S-E-P-H, Sainato, S-A-I-N-A-T-O.

16 REDIRECT EXAMINATION

17 BY MS. JACKS:

18 Q. Good afternoon, Agent Sainato.

19 A. Good afternoon, Ms. Jacks.

20 Q. Can you tell the jury how you're employed?

21 A. I'm a Special Agent for the FBI.

22 Q. And how long have you been an FBI Special  
23 Agent?

24 A. I started the Academy in February of 2015,  
25 so about three years.



1 Q. And were you assigned to assist in the  
2 FBI's investigation on this particular case?

3 A. Yes, ma'am.

4 Q. And as part of your job, in helping out  
5 with this case, did you participate in an interview  
6 with Lupe Urquizo?

7 A. Yes, ma'am.

8 Q. On -- and let me give you the date. On  
9 January 22, 2018?

10 A. Yes, ma'am.

11 MS. JACKS: Your Honor, I have --

12 Q. And did you also take notes?

13 A. I did.

14 Q. And can you tell us how you took notes  
15 during the interview?

16 A. This was the pretrial interview for Mr.  
17 Urquizo, so I had my laptop and I was taking notes  
18 on my laptop.

19 Q. And you were taking the notes  
20 contemporaneously with the discussion with Mr.  
21 Urquizo?

22 A. Yes, ma'am.

23 Q. And you were typing things out in your  
24 notes as they were said?

25 A. Correct.

1 Q. And you've had a chance to -- let me do  
2 this. I'm going to mark the FBI 302 and your notes  
3 just in case you need to refer to it during your  
4 testimony.

5 A. Thank you, ma'am.

6 MS. JACKS: So can we have the defense  
7 next in order? Your Honor, I'm going to mark the  
8 FBI 302 GC, G as in Good, C as in Charlie. And I'll  
9 mark -- that's a one-page document, and I'll mark  
10 the four pages of Agent Sainato's notes GD, G as in  
11 Good, D as in Dog.

12 And, Your Honor, may I approach and give  
13 these to the witness?

14 THE COURT: You may.

15 BY MS. JACKS:

16 Q. Now, Agent Sainato, if you need to refresh  
17 your memory, just let me know, and I'll give you the  
18 time and try to direct you to the area of those  
19 documents you might need.

20 A. Thank you.

21 Q. But first of all, did you prepare the  
22 official 302, the FBI report of the interview?

23 A. No, ma'am.

24 Q. Who prepared that?

25 A. Agent Stemo.

1 Q. And did Agent Stemo participate in the  
2 interview with Lupe Urquizo on that day?

3 A. She did not.

4 Q. So can you just -- is that normal, or is  
5 it unusual to have that happen?

6 A. That's not our normal procedure. It was  
7 an extraneous circumstance.

8 Q. So how did Agent Stemo prepare the 302, if  
9 she didn't participate in the interview?

10 A. I sent Ms. Stemo my notes.

11 Q. So you emailed them to her?

12 A. Yes, ma'am.

13 Q. Now, I want to ask you some questions  
14 about what Mr. Urquizo told you during the course of  
15 that interview.

16 A. Yes, ma'am.

17 Q. And if you need to refer to your notes,  
18 that's fine.

19 A. Okay.

20 Q. You'd agree with me that the 302 is  
21 significantly shorter than your notes, right?

22 A. That's correct.

23 Q. There's a lot of information contained in  
24 your notes that is not contained in the 302?

25 A. Yes, ma'am.

1 Q. And the notes that we're discussing, those  
2 were provided to me on Wednesday evening, February  
3 28th, at about 7:15 in the evening?

4 A. I have no idea when you got them, ma'am.

5 Q. Okay.

6 MS. JACKS: Your Honor, I'd offer a  
7 stipulation, then, with the Government that those  
8 notes were emailed to me Wednesday, February 28th,  
9 at approximately 1915 hours.

10 THE COURT: Is that going to be you, Ms.  
11 Armijo?

12 MS. ARMIJO: Yes, Your Honor. I would say  
13 evening. Without looking at the email, I don't want  
14 to give an exact time, but I can certainly check my  
15 emails to see, to verify. But right now, I don't  
16 have that in front of me. But would I say evening.

17 THE COURT: Is that all right?

18 MS. JACKS: That's fine.

19 THE COURT: All right.

20 BY MS. JACKS:

21 Q. So, Agent Sainato, I want to ask you just  
22 a few questions about what Mr. Urquizo said during  
23 that pretrial meeting that you were essentially  
24 transcribing.

25 A. Okay.

1 Q. So during that meeting, was it discussed  
2 with Mr. -- was the Molina homicide discussed with  
3 Mr. Urquizo?

4 A. Yes, it was.

5 Q. And did he tell you that just prior to the  
6 Molina homicide, the day prior, he was transferred  
7 to Southern New Mexico Correctional Facility?

8 A. Yes.

9 Q. I saw you sort of looking in the air.

10 A. Can I check my notes real quick?

11 Q. Yes, I want you to. And I think it would  
12 be at Bates page 54287, which is page 3 of your  
13 notes, and it would be the --

14 A. Third to last?

15 Q. Yes, third to last paragraph.

16 A. Yes, ma'am.

17 Q. Okay. And did he tell you -- did he tell  
18 you when he got to Southern New Mexico Correctional  
19 Facility there was no property officer on duty?

20 A. That's correct.

21 Q. And did he tell you that as he was being  
22 escorted to his unit -- well, did he tell you he was  
23 placed in yellow pod?

24 A. Let me just double-check that real quick.  
25 I'm sorry.

1 Q. I think it's in the same paragraph you  
2 were just looking at.

3 A. Thank you. Yes, ma'am.

4 Q. So did he tell you that he was escorted to  
5 yellow pod, where he was to be housed?

6 A. He did.

7 Q. And did he say anything happened on the  
8 way to yellow pod?

9 A. He said he passed the door to blue pod.

10 Q. Okay.

11 A. That's where he encountered three  
12 individuals.

13 Q. And who were the three individuals that he  
14 encountered?

15 A. I believe it was Mario Rodriguez, Timothy  
16 Martinez, and I'm going to have to check on the  
17 third. I'm sorry.

18 Q. Okay.

19 A. Jerry Montoya.

20 Q. And did he tell you that he spoke to them  
21 at that time, as he passed blue pod?

22 A. I believe so, yes.

23 Q. And did he tell you anything about Mario  
24 Rodriguez later passing him a note under the door  
25 between blue pod and yellow pod?

1 A. I'd have to double-check on that, as well.

2 I'm sorry.

3 Q. Okay.

4 A. Thank you. Yes, ma'am, he did.

5 Q. And did he tell you that the note that  
6 Rodriguez passed him was asking about paperwork on  
7 Javier Molina?

8 A. I'm sorry? One more time. Thank you.  
9 Yes, ma'am, he did.

10 Q. And in the note, did the note say anything  
11 about Rodriguez's desire to have certain people move  
12 on or hit Javier Molina?

13 A. I believe it did.

14 Q. Do you want to double-check?

15 A. I'll do that for you. Yes, ma'am.

16 Q. What did it say?

17 A. The note said that Mr. Rodriguez desired  
18 to have Timothy Martinez, Jerry Montoya, and Jerry  
19 Armenta do the hit.

20 Q. So the note that Rodriguez wrote said that  
21 Rodriguez wanted to have Timothy Martinez, Jerry  
22 Montoya, and Jerry Armenta do the hit?

23 A. Yes, ma'am.

24 Q. On Javier Molina?

25 A. Yes.

1 Q. Sometime the next day -- so this would be  
2 the day that Mr. Molina was killed -- did Mario  
3 Rodriguez send Mr. Urquizo another note?

4 A. Let me refer to my notes, please.

5 Q. I think this is in the last paragraph on  
6 that same page.

7 A. Thank you. Yes, ma'am.

8 Q. And according to that note, did Mr.  
9 Rodriguez communicate to Mr. Urquizo that Jerry  
10 Montoya, Jerry Armenta, and Timothy Martinez were  
11 going to be tasked with participating in the  
12 homicide?

13 A. Yes, ma'am.

14 Q. And did the note also say that Daniel  
15 Sanchez was assigned the task of covering the  
16 camera?

17 A. I believe so, but let me double-check real  
18 quick.

19 Q. Of course.

20 A. Thank you. Yes, ma'am, he did.

21 Q. During that same interview, did Lupe  
22 Urquizo discuss things that happened after Mr.  
23 Molina was murdered?

24 A. Yes.

25 Q. And did he tell you specifically that he,



1 Lupe Urquizo, Mario Rodriguez, David Calbert, Robert  
2 Martinez, and Roy Martinez discussed hitting or  
3 killing Daniel Sanchez after the Molina murder?

4 MS. ARMIJO: Your Honor, at this time  
5 we're going to object. This is not impeaching  
6 anybody. This is just pure hearsay.

7 THE COURT: Who would it be impeaching,  
8 Ms. Jacks?

9 MS. JACKS: Well, Your Honor, this was  
10 evidence that was withheld from us until Wednesday  
11 night, so it was my understanding that this was at  
12 least some bit of a remedy that the Court was  
13 permitting because the Government withheld this  
14 evidence.

15 THE COURT: Well, I think we've still got  
16 to conduct it pursuant to the Rules of Evidence, so  
17 if it's not impeaching --

18 MS. JACKS: Well, it does impeach Mr.  
19 Urquizo because, if I may, this statement is that --  
20 this statement involves wanting to kill Mr. Sanchez  
21 for two reasons.

22 MS. ARMIJO: Your Honor, may we approach  
23 instead of just blurting out what she thought before  
24 the jury?

25 THE COURT: All right. Why don't you

1 approach.

2 MS. JACKS: Well, it should be brought  
3 before the jury, and it should have been brought --

4 THE COURT: Let's approach.

5 (The following proceedings were held at  
6 the bench.)

7 THE COURT: Is there any way, if it's only  
8 going to impeach the witnesses, you can ask your  
9 question limited to that one person, rather than  
10 listing out all the other people where we don't have  
11 statements that it would impeach?

12 MS. JACKS: I can do that.

13 THE COURT: Any issue with that, Ms.  
14 Armijo?

15 MS. ARMIJO: Well, it depends on who  
16 they're going to impeach.

17 THE COURT: Give the name again.

18 MS. JACKS: Mr. Urquizo, because Mr.  
19 Urquizo said that the reason they wanted to hit  
20 Daniel Sanchez was because he didn't cover the  
21 cameras. And according to this statement, which we  
22 didn't have at the time, Mr. Urquizo testified he  
23 said it was for two reasons; one, because Sanchez  
24 didn't participate in the homicide, and, two,  
25 because he didn't cover the cameras.

1 MS. ARMIJO: And that goes straight to --  
2 they had the opportunity to call Mr. Urquizo to do  
3 that, and they chose not to.

4 THE COURT: Well, I still think they can  
5 impeach Urquizo through this witness if that's a  
6 statement that was made to or in front of Mr.  
7 Sainato. So I'll allow that impeachment.

8 MS. BHALLA: I don't have any problem with  
9 Ms. Jacks asking these questions, and I think it is  
10 fair game. But part of the problem with the late  
11 discovery is that it is an issue where that 302 also  
12 has some conversations about Carlos Herrera that we  
13 haven't brought out, and I don't want them to be  
14 brought out.

15 THE COURT: Let's see what Ms. Jacks does.  
16 You're not waiving any objection.

17 MS. JACKS: I specifically did not ask  
18 about those.

19 THE COURT: You can object if she gets  
20 there.

21 MS. BHALLA: I'm not worried about Ms.  
22 Jacks. I'm worried about the Government's  
23 cross-examination.

24 THE COURT: Approach before you get into  
25 that, because right at the moment I think it would

1 be beyond the scope.

2 MS. BHALLA: Thank you, Your Honor.

3 THE COURT: All right. Ms. Jacks.

4 (The following proceedings were held in  
5 open court.)

6 BY MS. JACKS:

7 Q. Thank you. Excuse me, Agent Sainato.  
8 Before the break, I was asking you about the  
9 discussion that occurred involving Mr. Urquizo after  
10 the Molina murder. Do you remember where we were?

11 A. Yes, ma'am.

12 Q. What I want to ask you is: Did Mr.  
13 Urquizo tell you that there was a discussion that he  
14 engaged in with some other inmates about hitting or  
15 killing Daniel Sanchez?

16 A. Yes, ma'am.

17 Q. And did he tell you that there were two  
18 reasons that people were discussing hitting or  
19 killing Daniel Sanchez after the Molina murder?

20 A. I remember one.

21 Q. Well, I'll ask them to you separately.  
22 Did he tell that one of the reasons that they wanted  
23 to kill Daniel Sanchez was because he did not  
24 participate in the Molina homicide?

25 A. I'll check my notes on that one.

1 Q. That would be at Bates 54288, fourth  
2 paragraph.

3 A. Thank you. Yes, ma'am. That's accurate.

4 Q. And did he also tell you that the other  
5 reason they talked about killing Daniel Sanchez was  
6 because he didn't cover the camera, that he didn't  
7 do the job he'd been tasked with, covering the  
8 camera?

9 A. That's correct.

10 Q. And did he say anything about discussions  
11 regarding killing Daniel Sanchez's brother?

12 A. Yes.

13 Q. Because they couldn't get to Daniel  
14 Sanchez, so they talked about killing his brother,  
15 Ronald?

16 A. Correct.

17 Q. And that was because Daniel Sanchez didn't  
18 participate in the homicide and didn't cover the  
19 cameras?

20 A. Correct.

21 Q. Now, I have a few more questions about the  
22 content of the FBI 302.

23 A. Okay.

24 Q. So if you need to look at that to refresh  
25 your memory, just let me know. Okay? So first of

1 all, in the FBI 302 is there any mention about the  
2 fact that when Lupe Urquizo got to Southern, there  
3 was no property officer on duty?

4 A. No, ma'am.

5 Q. Is there any mention in the 302 regarding  
6 this interview that when Mr. Urquizo passed blue pod  
7 on the way to yellow pod, he spoke to Mario  
8 Rodriguez, Timothy Martinez, and Jerry Montoya?

9 A. No, ma'am.

10 Q. Is there anything in the FBI 302 that says  
11 that -- that documents what Mr. Urquizo told you on  
12 that day that he said Mario Rodriguez passed him a  
13 note under the door which expressed Mr. Rodriguez'  
14 desire to have Timothy Martinez, Jerry Montoya, and  
15 Jerry Armenta kill Javier Molina?

16 A. No, ma'am.

17 Q. Is there anything in the FBI 302 regarding  
18 that January 22, 2018, interview that reflects that  
19 Mr. Urquizo told you that the next day Mario  
20 Rodriguez sent him a note saying that Javier Molina  
21 would be killed that afternoon?

22 A. No, ma'am.

23 Q. Is there anything in the FBI 302 that  
24 reflects that Mr. Urquizo told you in that note Mr.  
25 Rodriguez, Mario Rodriguez, said that Jerry Montoya,

1 Jerry Armenta, and Timothy Martinez were tasked with  
2 the actual killing?

3 A. Let me look real quick. I don't think so.

4 Q. At the FBI 302?

5 A. Yes, ma'am. No, ma'am.

6 Q. I mean, according to Urquizo, Rodriguez  
7 told him that he had assigned Montoya, Armenta, and  
8 Timothy Martinez roles in the actual killing of  
9 Javier Molina, right?

10 A. Could you say that one more time?

11 Q. I said according to that interview, Lupe  
12 Urquizo told you that Mario Rodriguez said that --  
13 let me go back. Lupe Urquizo told you that Mario  
14 Rodriguez had told him that Rodriguez had assigned  
15 Montoya, Armenta, and Timothy Martinez to actually  
16 perform the murder?

17 A. Yes, ma'am.

18 Q. And there is nothing about that in the  
19 302?

20 A. No, ma'am.

21 Q. And is there anything in the 302 regarding  
22 the fact that on that date, Lupe Urquizo told you  
23 that Mario Rodriguez had told him the day of the  
24 Molina murder that Mr. Sanchez, Daniel Sanchez, had  
25 been tasked with covering the cameras?

1 A. In the 302 or in the --

2 Q. In the 302. We know it's in your notes.  
3 You just testified to it. Is there anything in the  
4 302 about that?

5 A. No, ma'am.

6 Q. And is there anything in the 302 regarding  
7 the discussion that Lupe Urquizo had with others  
8 after the Molina murder about hitting Daniel  
9 Sanchez?

10 A. No, ma'am.

11 Q. And is there anything in the 302 about the  
12 discussion among those people being that Daniel  
13 Sanchez -- they wanted to kill Daniel Sanchez  
14 because he did not participate in the Molina  
15 homicide or cover the camera like he was supposed  
16 to?

17 A. That is not in the 302.

18 Q. Nothing in the 302?

19 A. No, ma'am.

20 MS. JACKS: If I could have a moment?

21 THE COURT: You may.

22 MS. JACKS: I have nothing further. Thank  
23 you.

24 THE COURT: Thank you, Ms. Jacks. Any  
25 other defendants have direct examination of Agent



1 Sainato?

2 MR. VILLA: No, Your Honor.

3 MS. DUNCAN: No, Your Honor.

4 THE COURT: All right. Ms. Armijo.

5 CROSS-EXAMINATION

6 BY MS. ARMIJO:

7 Q. Agent Sainato, what was the purpose of  
8 writing -- and just to be clear, the 302 that  
9 Ms. Jacks was referring to was not written by you,  
10 correct?

11 A. Correct.

12 Q. Who was it written by?

13 A. Special Agent Stemo.

14 Q. And at whose request was that 302 written?

15 A. The U.S. Attorney's Office.

16 Q. Okay. So let's go back to that interview  
17 that you sat in on. What was the point of that  
18 meeting?

19 A. It was a pretrial interview.

20 Q. Okay. And so who was in charge of that  
21 meeting, of asking questions?

22 A. Mr. Beck.

23 Q. Okay. And were you there primarily to  
24 take note if there was any new information?

25 A. That's correct.

1 Q. And then that's the notes that you were  
2 referring to, to refresh your recollection?

3 A. Yes, ma'am.

4 Q. And then did you subsequently go out of  
5 town?

6 A. I left the following week. There was a  
7 break between when -- I'd ask Mr. Beck if he wanted  
8 a 302 written, because I'd never done a pretrial  
9 interview before. It took him a couple of days to  
10 get back to me. By that time, I was either out of  
11 town or just about out of town. I can't remember  
12 the exact timeline. But I wasn't able to write the  
13 report, so I sent the notes to Agent Stemo to write  
14 the 302.

15 Q. Was the purpose of a 302 just to provide  
16 new information?

17 A. I believe that's what it was, yes, ma'am.

18 Q. All right. And I'm going to --

19 MS. JACKS: Objection. It doesn't sound  
20 like this witness knows.

21 Q. Is that your understanding?

22 A. That is my understanding, yes, ma'am.

23 Q. All right. And I'm going to show you  
24 Bates starting 43638.

25 MS. ARMIJO: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 Q. I want you to look at this document and  
4 see if it is a debrief report regarding Lupe Urquizo  
5 on March 6th of 2017?

6 A. Yes, ma'am. This looks like a 302 written  
7 by Special Agent Acee on March 6, 2017, reference  
8 Lupe Urquizo.

9 Q. All right. And in reference to that, are  
10 you aware if some of the questions that Ms. Jacks  
11 asked you about, that were not included in the 302  
12 that Nancy Stemo wrote, if they are actually  
13 included in here?

14 A. I haven't read that report in its  
15 entirety.

16 Q. All right. And I'm first going to ask you  
17 about page 2 of this report. You could read that  
18 second to last paragraph to yourself.

19 A. Yes, ma'am.

20 Q. And it was information in that report that  
21 was previously reported about Mr. Urquizo and what  
22 pod he was placed in and who came up and spoke to  
23 him?

24 A. Yes, ma'am.

25 Q. And then going to page 6 of that report.

1 MS. ARMIJO: If I may approach, Your  
2 Honor?

3 THE COURT: You may.

4 Q. I'm sorry. Go to page 4.

5 MS. BHALLA: May we get a page number, Ms.  
6 Armijo?

7 MS. ARMIJO: Yes. I'm sorry. 43640.

8 BY MS. ARMIJO:

9 Q. If you look at that last paragraph. Was  
10 there previous information in there already about  
11 letters that Mario Rodriguez wrote to Mr. Urquizo  
12 and sent him under the door?

13 A. Yes, ma'am.

14 Q. All right. And specifically, does that  
15 indicate that --

16 MS. JACKS: Object to counsel reading from  
17 the 302. This witness didn't write it. He wasn't  
18 present at the interview. It would be hearsay.

19 THE COURT: Let's not read out of it.  
20 Let's do our questions differently than that.

21 BY MS. ARMIJO:

22 Q. All right. You have that in front of you?

23 A. Yes, ma'am.

24 Q. Does Mr. Urquizo indicate anything in  
25 there about the letter that Mr. Rodriguez sent to

1 him underneath the door?

2 A. Yes, ma'am.

3 Q. And does that letter include information  
4 as to who wrote the letter to him?

5 A. If I may look at the report?

6 Q. Yes, please do.

7 A. Yes, ma'am.

8 Q. And who wrote the letter?

9 MS. JACKS: Object to this witness  
10 reading. This would be hearsay. He did not  
11 participate in the interview, and he did not write  
12 the report.

13 THE COURT: It does seem like it's  
14 secondhand. I mean, if he didn't write the 302, I  
15 think his notes are something else, but the 302  
16 would not be his, so I sustain the objection.

17 MS. ARMIJO: Okay, Your Honor. We're  
18 offering it not for the truth of the matter  
19 asserted, but for the reasoning that it's not  
20 included in another report that he was just --

21 MS. JACKS: The information that Ms. --

22 THE COURT: Well, I sustained the  
23 objection.

24 BY MS. ARMIJO:

25 Q. All right. Going to page 4 of the report,

1 which is 43641. And, again, just read that to  
2 yourself. Is there also information there regarding  
3 Mr. Sanchez? And I don't want to get into the  
4 contents of it, but was there information in there  
5 regarding Mr. Sanchez and his involvement in Molina?

6 A. Yes, ma'am.

7 Q. And lastly, on Bates 43643. Is there also  
8 information in that report in reference to Ronald  
9 Sanchez getting hit?

10 A. Yes, ma'am.

11 Q. So going back to the report that was  
12 generated specifically after Mr. Beck was meeting  
13 with Mr. Urquizo, what was the purpose of just  
14 limiting it to these things?

15 MS. JACKS: Objection, Your Honor. I  
16 don't think this witness prepared the 302, so I'm  
17 not sure what the basis of his knowledge would be.

18 THE COURT: Well, I think you're going to  
19 have to lay some foundation for the question. I'm  
20 not sure I see yet how he can answer that question.

21 BY MS. ARMIJO:

22 Q. Did Mr. Beck ask you to write a 302?

23 A. He did.

24 Q. And were you unable to do that?

25 A. I was.

1 Q. So did you task somebody else with doing  
2 so?

3 A. Yes.

4 Q. And in doing so, did you convey what was  
5 the purpose of it, since you had been tasked with  
6 it? Let me ask it a different way. Since you had  
7 been tasked with it and you were unable to do so,  
8 did Ms. Stemo then do that task for you?

9 A. Yes.

10 Q. So what was the point in making that 302?

11 A. My understanding, what Mr. Beck wanted in  
12 the 302 was just new information that was not  
13 previously covered in other debriefs of Mr. Urquizo.

14 Q. And I'm going to show you -- and these are  
15 letters dated January 28th to the attorneys in this  
16 case.

17 MS. ARMIJO: May I approach the witness,  
18 Your Honor?

19 THE COURT: You may.

20 Q. And I'm first going to start with one  
21 letter. I'm not going to ask you to read anything  
22 out loud, but does it appear to be dated January 28,  
23 2018?

24 A. Yes, ma'am.

25 Q. Does it appear to be to the defense

1 attorneys in this case?

2 A. Yes, ma'am.

3 Q. And in there, again not reading it out  
4 loud, does it appear to have information that Lupe  
5 Urquizo provided?

6 A. Yes, ma'am.

7 Q. And I'm going to show you another letter  
8 dated January 28th, as well.

9 A. Yes, ma'am.

10 Q. Does it appear to be addressed to the  
11 defense attorneys in this case?

12 A. Yes, ma'am.

13 Q. Just to be clear, this is a letter from  
14 the Government to -- I believe from the Government  
15 to the defense attorneys.

16 A. Okay.

17 Q. Is that correct?

18 A. Yes, ma'am.

19 Q. And does this second letter also have  
20 information about Lupe Urquizo's statement?

21 A. Yes, ma'am.

22 Q. Now, lastly, going specifically to your  
23 notes, do you still have those in front of you?

24 A. Yes, ma'am.

25 Q. Okay. Now, Ms. Jacks was asking you



1 questions specifically about page 3 of that  
2 document, and she's talking about Mr. Rodriguez'  
3 note that Urquizo indicated that he received. Do  
4 you recall that? I believe it's the third paragraph  
5 from the bottom.

6 A. Yes, ma'am.

7 Q. Now, does the note actually say that  
8 Rodriguez had the desire to have Timothy Martinez,  
9 Jerry Montoya, and Armenta do the hit? Or does it  
10 just say that there was -- that the note stated the  
11 desire to have Timothy Martinez, Jerry Montoya, and  
12 Jerry Armenta do the hit?

13 A. If I may refer?

14 Q. Sure. And, again the distinction being  
15 Rodriguez's desire, his desire, or the desire?

16 A. My notes say the desire.

17 Q. All right. And it doesn't indicate who  
18 actually came up with the plan, does it?

19 A. No.

20 Q. And it doesn't indicate if there was  
21 anybody -- who the desire referred to, does it?

22 A. No, ma'am.

23 Q. All right. And then in reference to Ms.  
24 Jacks' question about -- going now to the last page,  
25 I believe, of your notes, in talking about the

1 question that Ms. Jacks asked you about whether or  
2 not there was a hit on Daniel Sanchez because he did  
3 not participate in the Molina murder or even cover  
4 the camera like he was supposed to. Let me ask you  
5 a couple of questions about that.

6 Are you aware that Mr. Sanchez had been  
7 tasked with taking a shank from one of the persons  
8 that had actually stabbed Mr. Molina?

9 MS. JACKS: Objection, Your Honor. That's  
10 treating the testimony -- well, it's assuming facts  
11 not in evidence and treating the testimony as if it  
12 is a foregone conclusion.

13 THE COURT: Well, let me ask him if -- why  
14 don't you word it in terms of is he aware of any  
15 evidence that does that.

16 MS. ARMIJO: You know, Your Honor, I'll  
17 ask it as a hypothetical, maybe.

18 THE COURT: Well, I'm not sure we're  
19 interested in hypotheticals with this witness. If  
20 you want to ask it my way, either ask it my way or  
21 don't --

22 MS. ARMIJO: Yes, I will, Your Honor.

23 BY MS. ARMIJO:

24 Q. Are you aware of whether or not, as part  
25 of the plan to kill Jerry Montoya -- I'm sorry -- to

1 kill Javier Molina, if the shanks -- if Daniel  
2 Sanchez was supposed to take one of the shanks?

3 A. I think there was some mention of it that  
4 I just read in that report. But prior to a couple  
5 minutes ago, no, ma'am.

6 Q. Okay. You read it in the other report  
7 that I gave you, the other debrief?

8 A. Just now, yes, ma'am.

9 Q. Okay.

10 MS. JACKS: I would move to strike all of  
11 that as hearsay.

12 THE COURT: Well, yeah, that wasn't really  
13 the question I was trying to -- I thought was  
14 appropriate. So I'll strike the question and the  
15 answer.

16 MS. ARMIJO: All right.

17 BY MS. ARMIJO:

18 Q. Now, what your report indicates is that  
19 Sanchez did not participate or even cover the camera  
20 like he was supposed to, correct?

21 MS. JACKS: Objection. Counsel is not  
22 reading -- she's omitting words. The report reads  
23 differently than what Ms. Armijo just read.

24 THE COURT: Let me let you deal with that  
25 on redirect. Overruled.

1 MS. JACKS: I don't think she should be  
2 allowed to misrepresent what's in the notes to this  
3 jury.

4 THE COURT: It's overruled.

5 MS. ARMIJO: Sorry, Your Honor. There was  
6 an objection before for reading from it.

7 BY MS. ARMIJO:

8 Q. Does the report, to be fair -- I'll read  
9 right from it since there won't be an objection to  
10 it -- indicate that there was a hit, about hitting  
11 Daniel Sanchez because he did not participate in the  
12 Molina homicide or even cover the camera like he was  
13 supposed to do?

14 A. Yes, ma'am.

15 Q. Okay. Now, that doesn't indicate whether  
16 or not Mr. Sanchez had any involvement in calling  
17 the hit, does it?

18 MS. JACKS: Objection, calls for a  
19 conclusion.

20 THE COURT: Well, if he knows.

21 A. Could you state it again? I'm sorry.

22 Q. That does not necessarily -- that does not  
23 reference anything about whether or not Mr. Sanchez  
24 actually called the hit?

25 A. That statement does not, no.

1 Q. Okay. Because would you agree that  
2 someone can call a hit, and then there could also be  
3 somebody that actually participates in actually  
4 doing the murder?

5 MS. BHALLA: Objection, speculation and  
6 compound.

7 MS. JACKS: And also, participation would  
8 include calling.

9 THE COURT: Let me rule on one objection  
10 at a time. I'm going to sustain. It's really not  
11 helping us to find out what he thinks about these  
12 things, so it's sustained.

13 BY MS. ARMIJO:

14 Q. Mr. Urquizo never said that Daniel Sanchez  
15 was not involved, did he?

16 MS. JACKS: Objection, misstates the  
17 testimony.

18 THE COURT: Overruled.

19 A. I'm sorry?

20 Q. Mr. Urquizo never told you during that  
21 pretrial -- or I should say told Mr. Beck during  
22 that pretrial interview that Daniel Sanchez was not  
23 involved in the Molina murder?

24 MS. JACKS: Objection, misstates the  
25 testimony.

1 THE COURT: Overruled.

2 A. Could you do it one more time? I'm sorry.

3 Q. Mr. Urquizo, during the interview that Mr.  
4 Beck had with him, he never told you that Daniel  
5 Sanchez was not involved in the Javier Molina  
6 murder?

7 A. Correct.

8 MS. ARMIJO: If I may have a moment?

9 THE COURT: You may.

10 MS. ARMIJO: That's it. I pass the  
11 witness.

12 THE COURT: All right. Thank you, Ms.  
13 Armijo.

14 Ms. Jacks, do you have redirect of Agent  
15 Sainato?

16 MS. JACKS: Just a few questions.

17 THE COURT: Ms. Jacks.

18 REDIRECT EXAMINATION

19 BY MS. JACKS:

20 Q. Agent Sainato, while Ms. Armijo was asking  
21 you questions, did she show you an FBI 302 from  
22 March 6, 2017?

23 A. She showed me a 302. I can't remember the  
24 specific date on it, but that sounds right.

25 Q. Okay. But it was a report of a prior

1 interview with Mr. Urquizo?

2 A. Yes, ma'am.

3 Q. And were you present during that  
4 interview?

5 A. I was not.

6 Q. Did you prepare that 302?

7 A. No, ma'am.

8 Q. And had you even seen it prior to today?

9 A. No, ma'am.

10 Q. Okay. Now, Ms. Armijo asked you some  
11 questions about what Mr. Beck asked you to do in  
12 terms of preparing a 302 documenting the interview  
13 that you participated in, in January of 2018. Do  
14 you recall those questions?

15 A. Yes, ma'am.

16 Q. And specifically, I think what she asked  
17 you about was: Did Mr. Beck tell you to just  
18 include, quote, "new information"?

19 A. That's what she asked me, yes, ma'am.

20 Q. You didn't prepare the report, right?

21 A. No, ma'am.

22 Q. And in order to know what information  
23 might be, quote, "new," you would have had to go  
24 back and read all the previous FBI 302s regarding  
25 interviews with Mr. Urquizo, right?

1 A. If I was preparing the report, yes, ma'am.

2 Q. Okay. Because otherwise, you wouldn't  
3 know what was new, right?

4 A. Correct.

5 Q. And while you were looking at that report  
6 that Ms. Armijo showed you, did you notice whether  
7 it said anything about Mr. Sanchez not participating  
8 in the homicide of Javier Molina and not covering  
9 the cameras?

10 A. I looked at it quite briefly, ma'am.

11 Q. Well --

12 A. Could you restate?

13 Q. Yeah. I mean, the point is, there's  
14 nothing in that 302 that says Mr. Urquizo said Mr.  
15 Sanchez did not participate in the Molina homicide  
16 and did not cover the cameras?

17 A. I can't really say what's not in that 302.  
18 I'm sorry.

19 Q. It's lengthy?

20 A. Correct.

21 Q. And you didn't have a chance to read it up  
22 there on the witness stand?

23 A. Correct.

24 Q. Okay. I want to just try to make sure I  
25 understand what your role in the interview in



1 January 2018 was with respect to Lupe Urquizo.

2 A. Okay.

3 Q. So during the interview, you were the  
4 person that was tasked with taking notes, right?

5 A. Correct.

6 Q. And you took that job seriously?

7 A. Yes, ma'am.

8 Q. And you attempted to be as accurate as  
9 possible?

10 A. Yes, ma'am.

11 Q. And it sounds like the way that you took  
12 notes by just typing them into your computer was  
13 almost like you were transcribing the interview?

14 A. I wouldn't say transcribing. That would  
15 involve more like what these ladies are doing here.  
16 I was summarizing as we went.

17 Q. Okay. And summarizing every topic that  
18 was discussed during that interview?

19 A. Yes, ma'am.

20 Q. And did you make an attempt to do that as  
21 accurately as possible?

22 A. I did.

23 Q. And did you make an attempt not to leave  
24 anything out?

25 A. Yes, ma'am.

1 Q. And you've had a chance to review those  
2 notes both yesterday and today, right?

3 A. Yes, ma'am.

4 Q. And are they accurate notes of that  
5 interview with respect to Mr. Urquizo?

6 A. Yes, ma'am.

7 Q. And you would agree with me that they're  
8 much more detailed than the FBI 302 that was  
9 ultimately prepared?

10 A. Yes, ma'am.

11 Q. And the four pages are single-spaced,  
12 right?

13 A. Yes.

14 Q. It's a lot of information?

15 A. It is.

16 Q. And do you recall -- and I'm just asking  
17 from your recollection of that interview -- how long  
18 you sat there and spoke with Mr. Urquizo back in  
19 January of 2018?

20 A. I don't recall.

21 Q. Can you give us an estimate? Like was it  
22 more than an hour? Was it more than two hours?

23 A. More than an hour. I don't know if two.

24 Q. So somewhere, probably, between an hour  
25 and two hours?

1 A. That's fair.

2 Q. And I think you testified, when Ms. Armijo  
3 asked you, that Lupe Urquizo never said Daniel  
4 Sanchez was not involved?

5 A. I said that.

6 Q. Do you recall that testimony?

7 A. Yes, ma'am.

8 Q. So I have a few questions about that.  
9 First of all, Mr. Urquizo told you that he discussed  
10 with other people killing Daniel Sanchez after the  
11 Molina murder, right?

12 A. Yes, ma'am.

13 Q. And he told you that they discussed that  
14 because Daniel Sanchez did not participate in the  
15 Molina homicide?

16 A. That's correct.

17 Q. Or even cover the camera like was supposed  
18 to do?

19 A. Yes, ma'am.

20 Q. And Mr. Urquizo also told you that Mario  
21 Rodriguez tasked Mr. Sanchez with covering the  
22 camera?

23 A. If I may refer to my notes for that one?

24 Q. Of course.

25 MS. ARMIJO: Ms. Jacks, are you referring

1 to a certain page?

2 MS. JACKS: 54287.

3 Q. Last paragraph. I think I asked you about  
4 this. I did ask you.

5 A. Yes, ma'am. Thank you.

6 Q. That was supposed to be his job?

7 A. Correct.

8 Q. And other --

9 MS. ARMIJO: Your Honor, that incorrectly  
10 reflects what he wrote. I'd ask that Ms. Jacks --

11 Q. I'll read what you wrote. Did you write  
12 in your 302 that Daniel Sanchez was supposed to  
13 cover the camera?

14 A. I did.

15 Q. And did you write in your 302 that that  
16 was information provided to Mr. Urquizo by way of a  
17 note written by Mario Rodriguez?

18 A. I didn't write the 302, ma'am.

19 Q. I'm sorry. The notes. I'm sorry. Let me  
20 reask the question. Did you write in your notes  
21 that that information was contained in a note that  
22 Mario Rodriguez passed to Lupe Urquizo?

23 A. I believe so.

24 Q. And did that note also assign roles to Mr.  
25 Montoya, Mr. Armenta, and Mr. Martinez?

1 A. Yes, ma'am.

2 Q. In regards to the discussion that day  
3 about the Molina homicide, other than saying that  
4 Daniel Sanchez was supposed to cover the camera, did  
5 Mr. Urquizo tell you anything else about Daniel  
6 Sanchez playing a role or being assigned a role in  
7 that crime?

8 A. Not that I can recall.

9 MS. JACKS: I have nothing further.

10 THE COURT: Thank you, Ms. Jacks.

11 Does any other defendant have any redirect  
12 of Mr. Sainato? All right. You may step down.

13 Thank you for your testimony. Is there any reason  
14 that the agent cannot be excused, Ms. Jacks?

15 MS. JACKS: Yes, he may be. Thank you.

16 THE COURT: All right. Can he be excused  
17 from the Government's standpoint, Ms. Armijo?

18 MS. ARMIJO: Yes, Your Honor.

19 THE COURT: All right. You are excused  
20 from the proceeding, not hearing any other  
21 objection.

22

23

24

25

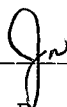
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3  
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
6 Official Court Reporter for the State of New Mexico,  
7 do hereby certify that the foregoing pages  
8 constitute a true transcript of proceedings had  
9 before the said Court, held in the District of New  
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my  
12 hand on this 30th day of March, 2018.

13  
14   
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